

No. 8587-~~8588~~

In the Supreme Court

OF THE

STATE OF CALIFORNIA.

CHARLES LUX ET AL.,

APPELLANTS,

vs.

JAMES B. HAGGIN ET AL.,

RESPONDENTS.

— ACTS —

Passed by the Legislature of California and Congress,
relating to Watercourses and their use for
Irrigation, by the People and by
Corporations.

Printed in their Chronological Order.

APPENDIX TO BRIEF *and* ARGUMENT

OF STEWART & HERRIN,

Attorneys for the Merced Canal and Irrigation Co and others.

Filed April

18th

A. D. 1885.

By

J. H. McCarthy Clerk.

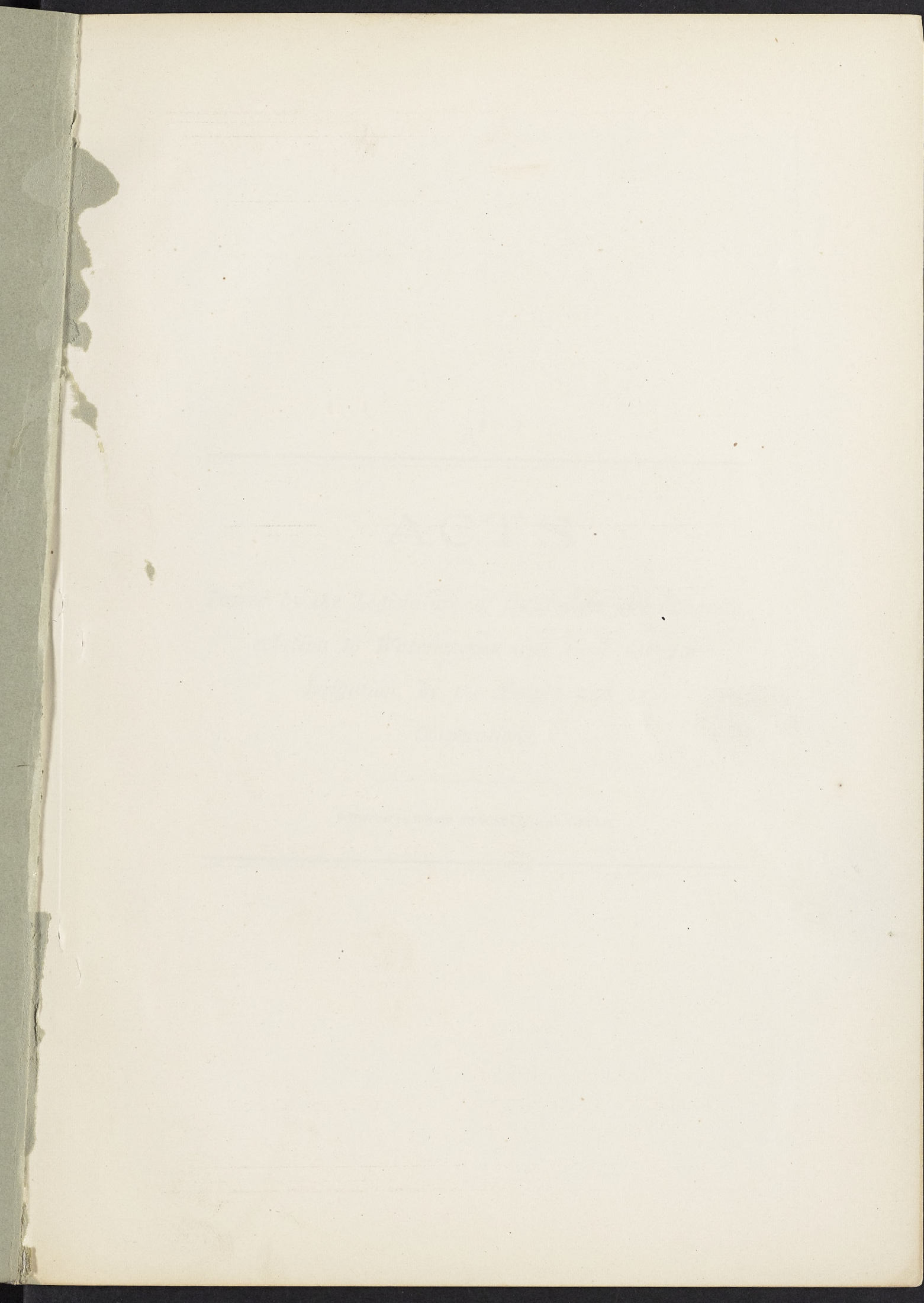
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ACTS

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ACTS

Passed by the Legislature of California and Congress

relating to Railroads and their use for

freight and the people and for

regulation

San Francisco: Published by the

APPENDIX.

AN ACT

Creating a Board of Commissioners and the office of Overseer, in each Township of the several Counties of this State, to regulate Watercourses within their respective limits.

[Passed May 15, 1854. Statutes 1854, p. 76.]

The People of the State of California represented in Senate and Assembly, do enact as follows:

SECTION 1. There shall be in each township of the counties of San Diego, San Bernardino, Santa Barbara, Napa, Los Angeles, Solano, Contra Costa, Colusa, and Tulare, a Board of Commissioners to regulate watercourses, to consist of three members, and also an overseer, to be elected as hereinafter provided.

SEC. 2. Upon a petition of a majority of the voters of any township in said counties, the County Judge shall thereupon order an election, of which ten days notice shall be given by at least three notices posted up at the most public places in such township, for the election of three Commissioners and an overseer, who shall hold their office for one year. The County Judge shall, for the purpose of holding said election, appoint one inspector and two judges, whose duty it shall be to see that said elections are conducted in accordance with the laws regulating elections, sum up the votes and declare the result.

SEC. 3. The duties of the Commissioners shall be to examine and direct such watercourses, and apportion the water thereof among the inhabitants of their district, determine the time of using the same, and upon petition of a majority of the persons liable to work

upon ditches, lay out and construct ditches, as set forth in such petitions.

SEC. 4. The duties of the overseer shall be to execute the orders of the Commissioners, to attend to and see that the water is used as apportioned by said Commissioners, to superintend the works ordered by them, to see that the water is kept clear of filth of every description, and the ditches are kept in good repair.

SEC. 5. Each able-bodied male inhabitant in every township over the age of sixteen and under fifty, shall, when required by the overseer, upon not less than three days verbal notice, or by notice in writing, left at their residence, perform or cause to be performed any number of days' work not exceeding twelve in any one year; *provided*, that no person shall be compelled to work more than two successive days at any one time, and in no case shall any person or persons be compelled to work or expend money on any ditch or ditches who does not use the water thereof.

SEC. 6. In case any person after being duly notified as required in the preceding section shall fail to do or cause to be done the amount of work required, he shall be liable to pay the sum of three dollars per day for every day that he shall fail to work, recoverable at a suit of the overseer, before any competent tribunal, to be by him applied to the construction of ditches within his township.

SEC. 7. In case a watercourse should run through two or more townships, and the Commissioners should not be able to agree as to the amount of water to be used by each township, the County Judge, upon application of the Commissioners, shall determine the difficulty.

SEC. 8. The Commissioners shall allow the overseer reasonable compensation, and for that purpose they are hereby authorized to levy a tax within their township on persons benefited in proportion to the amount of water used by each.

SEC. 9. Where water rises on land owned by any person, it shall not be subject to the provisions of this act, but in all cases after it has passed beyond the limits of said lands, it may be used as provided in this act.

SEC. 10. In all cases the Commissioners shall have the right of way to cut ditches through their townships.

SEC. 11. Any person obstructing the waters of any ditch, by dam, or otherwise, causing the same to overflow or waste, or who shall throw or cause to be thrown any filth in any such water-ditch, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined in any sum not more than ten dollars for the first offense, and twenty for every subsequent offense of the same kind, recoverable at the suit of the overseer before any Justice of the Peace of the township, to be appropriated as aforesaid.

SEC. 12. In case any person should be damaged by the breaking of any such ditch, the parties using such ditch shall be liable for all such damages.

SEC. 13. Bridges shall be constructed and kept in repair over such ditches, by the parties using the water, at such points as the Board of Commissioners shall direct.

SEC. 14. No person or persons shall divert the waters of any river, creek or stream from its natural channel to the detriment of any other person or persons located below them on any such stream.

SEC. 15. Any person or persons who, under this act, shall conduct water by ditch or otherwise, across the lands of any person or persons, shall pay to such person or persons owning such lands, such compensation as can be agreed upon by the parties owning the lands, and in case the parties cannot agree, each party shall appoint one arbitrator, and the two so appointed shall select a third. The arbitrators so chosen shall appraise the lands used for ditching purposes, under oath, and their decision shall be final in the premises: *provided*,

that nothing in this act shall be so construed as to apply to the mining interests of this State.

SEC. 16. The Mayor and Common Council in all incorporated cities in the counties mentioned in section first of this act, shall *ex officio* be constituted the Board of Commissioners on all lands appertaining or belonging to their respective cities, and shall have power to regulate the water privileges therein.

AN ACT

To amend an Act creating a Board of Commissioners, and the office of Overseer, in each Township of the several Counties of this State, to regulate Watercourses within their respective limits, passed May 15, 1854.

[Approved, February 19, 1857. Statutes 1857, p. 29.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section first, of said Act, is hereby amended so as to read as follows:

Section one. There shall be in each township of the Counties of San Diego, Santa Barbara, San Luis Obispo, Napa, Los Angeles, Solano, Contra Costa, Colusa, Tulare and Santa Cruz, a Board of Commissioners to regulate watercourses, to consist of three members, and also an Overseer, to be elected as hereinafter provided.

AN ACT

To create a Board of Water Commissioners, in the County of San Bernardino, and define their duties.

[Approved March 6, 1857. Statutes 1857, p. 63.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. There shall be in the County of San Bernardino, a Board of Water Commissioners, to regulate watercourses, to consist of three members.

SEC. 2. They shall be elected at the general election of county officers, and shall hold office one year; in case of a vacancy from any cause, such vacancy shall be filled by the Board of Supervisors.

SEC. 3. They shall appoint as many Overseers as they may deem proper, for the regulation of the water-ditches in the county.

SEC. 4. The duties of the Commissioners shall be:

First, Upon petition by a majority of persons interested, they shall lay out any ditch, and apportion the water thereof among the people using the same, according to the amount of land each person may wish to irrigate.

Secondly, Upon the receipt of the returns of the Overseers of the number of acres required to be irrigated, and the probable number of day's work required to be done on any ditch in that season, they shall apportion the water thereof among the persons concerned.

Thirdly, They shall, as soon as they have apportioned the water, make a schedule, stating the hours that such persons shall use the water, commencing at the head, and also opposite the name of each person, the estimated number of day's work he will be required to perform.

SEC. 5. The duty of the Overseers shall be, to execute the orders of the Commissioners, to attend to, and see that the water is used as apportioned by said Commissioners, to superintend the works ordered by them,

to see that the water is kept clear of filth of every description, and that the ditches are kept in good repair. The Overseers shall, on or before the first day of February in each year, examine the ditch from head to foot, and make an estimate of the number of day's work that will be required to put such ditch in working order, to hold and carry all the water that may be required to pass through said ditch, and report the same to the Commissioners, together with the amount of land that each person may want to irrigate from said ditch; should the estimated number of days' work be insufficient to keep said ditch in repair during the season, the Overseers shall call upon every person to labor, in proportion to the amount of land to be irrigated by them from said ditch; he shall keep a correct account of all work done on each ditch, and every person who shall fail to perform his allotted portion of labor, after having received two days' notice, shall be considered delinquent, and shall pay the sum of ten dollars for each and every day, recoverable at the suit of the overseers, with costs of suit, before any competent tribunal, to be by him applied to the repair of the ditch that the said labor was due upon.

SEC. 6. Eight hours shall constitute a days' labor upon any water ditch, a team of two horses shall be equal to one-day's work; a plough, wagon, or scraper, shall, when used, be equal to one-half day's work.

SEC. 7. In case any watercourse run through two or more townships, and the Commissioners should not be able to agree as to the amount of water to be used by each township, the County Judge, upon the application of the Commissioners, shall determine the difficulty.

SEC. 8. The Commissioners and Overseers shall be allowed two dollars per day for each and every day engaged upon any water-ditch in the county, and for this purpose they are hereby authorized to levy a tax within

each township, upon persons thus benefited, in proportion to the amount of water used by each.

SEC. 9. When water rises on land owned by any person, it shall not be subject to the provisions of this Act, but in all cases, after it has passed beyond the limits of said lands, it may be used as provided in this Act.

SEC. 10. In all cases the Commissioners shall have the right of way to cut ditches through their county.

SEC. 11. Any person using the water when it is not his right so to do, and when it belongs below him, and any person obstructing the water of any ditch, either by dam or otherwise, or, who shall throw or cause to be thrown, any filth into any such water-ditch, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined in any sum not more than twenty dollars for the first offense and fifty dollars for every subsequent offense of like nature, recoverable at the suit of the Overseers before any Justice of the Peace of the township; to be appropriated to the payment of Overseers' salaries, or repairing said ditch.

SEC. 12. In case any person or persons shall be damaged by the breaking of any ditch, the parties using such ditch shall be liable for all such damages.

SEC. 13. No person or persons shall divert the waters of any river, creek or stream from its natural channel, to the detriment of any person or persons using said waters below, on any such river, creek or stream.

SEC. 14. Any person or persons, who under this Act, shall conduct water by ditch or otherwise, across the lands of any person or persons owning such land or lands, such compensation as may be agreed upon by the parties concerned, shall be paid to the owner or owners of such land or lands, and in case the parties cannot agree, each party shall appoint one arbitrator, and the two so appointed shall select a third; the Arbitrators so chosen, shall appraise the lands thus used,

under oath, and their decision shall be final in the premises.

SEC. 15. The Mayor and Common Council of the City of San Bernardino, shall have power to regulate the water and water privileges therein.

SEC. 16. The streams at the foot of the mountain, north of the City of San Bernardino, known as Twin Creeks, are hereby incorporated, and secured, for the sole benefit and exclusive use of said city, subject to the provisions of sections fourteenth and fifteenth of this Act.

SEC. 17. An Act creating a Board of Commissioners, and the office of Overseer, in each township of the several counties of this State, to regulate watercourses within their respective limits, passed May 15th, 1854, as far as the same conflicts with this Act, is hereby repealed.

AN ACT

Amendatory of, and supplemental to, an Act entitled "An Act to create a Board of Water Commissioners in the County of San Bernardino, and define their Duties," approved March sixth, A. D. eighteen hundred and fifty-seven.

[Approved April 12, 1859, Statutes 1859, p. 217.]

The People of the State of California, represented in Senate and Assembly, do enact as follows :

SECTION 1. Section eleven of said Act is hereby amended so as to read as follows:

Section eleven—Any person using the water, when it is not his right to do so, and when it belongs to any person below him, and any person obstructing the water of any ditch, either by dam or otherwise; or who shall throw, or cause to be thrown, any filth into any such ditch; or who, under section four of the provisions of this Act, shall obtain a greater quantity of

water than is justly his right, according to the number of acres of land actually irrigated by fraudulently overstating the number of acres to be irrigated by such water, shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined not more than fifty dollars for the first offense, and not more than one hundred dollars for every subsequent offense of like nature, recoverable at the suit of the Overseers, or at the suit of any person injured by such fraudulent statement of number of acres to be irrigated. Such suit may be brought before any Justice of the Peace of the Township, be appropriated to the payment of Overseers' salaries, or repairing said ditch.

AN ACT

To create a Board of Water Commissioners in the County of Merced, and define their duties.

[Approved April 13, 1860. Statutes of 1860, p. 182.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Board of Supervisors in the County of Merced are hereby constituted a Board [of] Water Commissioners.

SEC. 2. The duties of the Commissioners shall be:

First—To regulate the water ditches used for irrigating and milling purposes in said county.

Second—Upon the petition of any person or persons interested, they shall lay out, or cause to be laid out, by the appointment of an Overseer, any ditch to be used for the purposes aforesaid, and where the water is to be used by more than one person, to apportion the same according to the amount of labor or capital invested.

SEC. 3. The Commissioners and Overseers shall be allowed and receive four dollars per day for each and every day engaged in laying out any water ditch in the county, which shall be paid by the party or parties for whose benefit the same is laid out.

SEC. 4. When water rises on land owned by any person, it shall not be subject to the provisions of this Act; but in all cases after it has passed beyond the limits of said lands, it may be used as provided in this Act.

SEC. 5. In all cases the Commissioners shall have the right of way to lay out and cut ditches through their county.

SEC. 6. Any person using the water when it is not his right so to do, and when it belongs below him, and any person obstructing the water of any ditch, either by dam or otherwise, or who shall throw, or cause to be thrown, any filth into any such water ditch, shall be deemed guilty of misdemeanor, and, upon conviction thereof, be fined in any sum not more than twenty dollars for the first offense, and fifty dollars for every subsequent offense of like nature, recoverable at the suit of the owner or owners of such ditch, before any Justice of the Peace of the township, to be appropriated to the payment of Commissioners' and Overseers' services, or repairing said ditch.

SEC. 7. In case any persons or person shall be damaged by the breaking of any ditch, the parties using such ditch shall be liable for all such damages.

SEC. 8. No persons or person shall direct the waters of any river, creek, or stream from its natural channel, to the detriment of any person or persons using said waters below, on any such river, creek or stream.

SEC. 9. Any person or persons who, under this Act, shall conduct water by ditch or otherwise across private land or lands, and such person or persons cannot agree with the owner of said lands as to the amount of damages to be paid him therefor, the said person or

persons so conducting water, shall petition the County Court of the county in which the land may be situated, briefly setting forth the facts of such disagreement, and praying the Court to appoint three Commissioners to assess the damages arising from the taking of such right of way; and such Court shall, thereupon, appoint three disinterested persons, who shall have power to proceed to such premises, and to determine all questions of damages to such land arising from such taking; to take testimony, and to award the amount of damages to the person or persons entitled thereto, and for this purpose said Commissioners shall have power to administer oaths. The Commissioners shall make their report to the Court, and the same shall be affirmed or set aside for cause shown; and if set aside, a new Commission shall be appointed, who shall proceed in like manner; and as soon as such award shall be affirmed, it shall have the effect of a judgment, and execution may be issued thereupon by the Clerk of the Court.

SEC. 10. This Act shall take effect from and after its passage.

AN ACT

To amend "An Act creating a Board of Commissioners and the office of Overseer in each Township of the several Counties of this State, to Regulate Water-courses within their respective limits," passed May fifteenth, one thousand eight hundred and fifty-four.

[Approved, April 28th, 1860. Statutes 1860, p. 335.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section fifteen of said Act is hereby amended so as to read as follows:

Sec. 15. Any person or persons, who, under this Act, shall conduct water by ditch or otherwise, across the lands of any person or persons, shall pay to such

person or persons, owning such lands, such compensation as may be agreed upon by the parties owning the lands; and in case the parties cannot agree, each party shall appoint one Arbitrator, and in case either party shall neglect or refuse to appoint such Arbitrator, for the space of three days, after written notice has been served on the parties so refusing or neglecting, requiring him to make such appointment, then it shall be lawful, and shall be the duty of the County Judge to appoint one Arbitrator for the party so refusing, and the two so appointed shall select a third; the Arbitrators so chosen may appraise the lands used for ditching purposes, and shall hear and determine all questions of damages arising from the taking and use thereof, and to award the amount of the same to the parties entitled thereto; and for this purpose, said Arbitrators shall have power to administer oaths. Before proceeding to appraise said lands, said Arbitrators shall make and subscribe an oath, that they will faithfully and honestly perform the duties of their appointment. The said Arbitrators shall make their report to the County Court, and the same shall be affirmed or set aside, for cause shown; and if set aside, new Arbitrators shall be appointed in the same manner as above, who shall proceed in like manner; and as soon as such award shall be affirmed, it shall have the effect of a judgment, and execution may be issued thereupon by the Clerk of the Court; *provided*, that nothing in this Act shall be so construed as to apply to the mining interests of this State.

AN ACT

To amend an Act creating a Board of Commissioners, and the office of Overseer, in each Township in the several Counties of this State; to regulate Watercourses within their respective limits, passed May fifteenth, eighteen hundred and fifty-four, and the several Acts amendatory thereto.

[Approved February 21, 1861. Statutes 1861, p. 31.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section one of said Act is hereby amended so as to read as follows:

Sec. 1. There shall be, in each of the townships of the counties of San Diego, Santa Barbara, San Luis Obispo, Napa, Los Angeles, Solano, Contra Costa, Colusa, Tulare, Tehama, Sonoma and Santa Cruz, a Board of Commissioners to regulate watercourses, to consist of three members, and also an Overseer, to be elected as hereinafter provided.

AN ACT

To amend an Act entitled an Act creating a Board of Commissioners, and the office of Overseer, in each township of the several counties of this State, to regulate Watercourses within their several limits, passed May fifteenth, one thousand eight hundred and fifty-four.

[Approved April 10, 1862. Statutes 1862, p. 235.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section two of the said Act, hereby amended, is amended so as to read as follows:

Section 2. Upon the petition of a majority of the

the voters of any township in said counties, the Board of Supervisors of the respective county shall thereupon order an election, of which ten days' notice shall be given, by at least three notices, posted up at the most public places in such township, to be held at the next general election of township officers of such township, for the election of three Commissioners, and an Overseer, whose term of office shall be for one year, and until the election and qualification of their successors; such election shall be conducted by the inspector and judges of election in accordance with the laws regulating elections. The Boards of Supervisors shall canvass the votes and declare the result. At each succeeding annual election of township officers, three Commissioners and an Overseer shall be elected by the qualified electors of such township, who shall hold their offices for the term above specified. Vacancies occurring in the office of Overseer, by death, resignation, or other casualty, shall be filled by appointment by the Commissioners, and the person so appointed shall hold his office until the next annual election of township officers.

SEC. 2. Section three of the said Act, hereby amended, is amended so as to read as follows:

Section 3. The duties of the Commissioners shall be to examine and direct such watercourses as they adjudge ought to be appropriated to public use, and apportion the water thereof among the inhabitants of their district, determine the time of using the same, and, upon a petition of a majority of the persons liable to work upon ditches, lay out and construct ditches, as set forth in such petition.

SEC. 3. Section fourteen of the Act hereby amended, is amended so as to read as follows:

Section 14. No person or persons shall direct the waters of any river, creek, or stream from its natural channel, to the detriment of any other person or persons, located below them, on any such stream, unless

previous compensation be ascertained and paid therefor, under the provisions of this Act, or under the provisions of other laws of this State authorizing the taking of private property for public uses.

AN ACT

To create a Board of Water Commissioners in the County of San Bernardino, and to define their duties.

[Approved February 18, 1864. Statutes 1863-4, p. 87.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. There shall be elected at the next election held in the County of San Bernardino for the election of a member of the Board of Supervisors for said county, three Water Commissioners, who shall hold their office for the term of one year, and until their successors are qualified; and at the next general election, and every two years thereafter, there shall be elected the same number of such Commissioners who shall hold office for the term of two years, and until their successors are elected and qualified. Said Board shall have the power and perform the duties hereinafter provided. Until the Board of Commissioners first provided in this section are elected and qualified, the present board of Water Commissioners of said county shall be continued in office, and shall exercise the duties prescribed by this Act, and be governed by its provisions. In case of vacancy, by death or otherwise, in said Board, the same shall be filled by appointment by the Board of Supervisors of said county.

SEC. 2. The duties of the above Commissioners shall be :

First—They shall appoint as many Overseers as they may deem necessary for the proper regulation of the

watercourses and ditches in said county, and shall have power to revoke the same at pleasure.

Second—Upon a petition of a majority of those interested, or who own legitimate claims on any ditch, they shall lay out any ditch or ditches and apportion the water thereof among the persons using the same in proportion to the amount of land each person may wish to irrigate; *provided*, there should be water sufficient in said ditch for the irrigation of all said land; but in case there should not be a sufficient amount of water for said irrigation in any such ditch, upon a petition of a majority of those holding such interests, as aforesaid, the Water Commissioners shall immediately reapportion, without prejudice to any prior occupation, the water thereof; and any person who shall have put in for more land to irrigate than his proportion, according to the pro rata of water in the ditch or stream from which he is furnished with water, a reapportionment shall immediately be made as provided in this section.

Third—Upon the receipt of the returns of the Overseers, of the number of acres to be irrigated and the amount of water in said ditch to be used for irrigating purposes, and the probable number of days' work required to be done on any ditch in that season, they shall apportion the work thereof among the persons required to perform the same.

Fourth—[They] shall, as soon as they have apportioned the water, make a schedule stating the hours that each person shall be entitled to use the water, commencing at the head of each ditch; also, opposite the name of each person, the number of days' work he shall be required to perform.

Fifth—[They] shall keep a book in which they shall record in full all the official acts of said Board, which book shall be furnished by the Board of Supervisors, at the expense of the county, and shall be transferred to their successors in office.

SEC. 3. It shall be the duty of the Overseers to execute the orders of the Commissioners; to attend to and see that the water is used as apportioned by the Commissioners; to superintend the work ordered by them; to see that the water is kept clear of all filth and obstructions of every description, and that the ditches are kept in good repair.

SEC. 4. Said Overseers shall, on or before the first day of February in each year, examine the ditches their entire length and make an estimate of the number of days' work required to put such ditch in good repair, and of sufficient capacity to hold and carry all the water that may be required to pass through them, and report the same to the Commissioners, together with the amount of land to be irrigated and the amount of water in each ditch.

SEC. 5. Said Overseers shall keep a correct account of all work done, and by whom, on such ditches; and any person who shall fail to perform their proportion of labor, after having received two days notice, he shall be considered delinquent, and shall pay the sum of ten dollars for each and every day delinquent, which shall be recoverable at the suit of the Overseer, with costs of suit, before any Court of competent jurisdiction in the county or township, to be by him applied to the repair of the ditch upon which said work is due; *provided*, that when any ditch shall break so as to cause a loss of water, or an improper diversion thereof, those interested shall respond immediately to the call of the Overseer for the repair of the same.

SEC. 6. Should the estimated number of days' work be insufficient to keep said ditches in repair during the season, the Overseer shall call upon every person, without previous notice, who are interested, to perform labor in proportion to the amount of land irrigated by him, sufficient to complete the work of repairing said ditches.

SEC. 7. Eight hours shall constitute a day's work:

a team of two horses shall be equal to one day's work; a plough, wagon or scraper, shall, when used, be equal to one-half day's work. When those from whom labor is due are called upon by the Overseer, they shall furnish, at the beginning of the work a force in accordance with the provisions of this section in proportion to the amount of labor due from them.

SEC. 8. In case any watercourse should run through two or more townships, and the Commissioners should not be able to agree as to the amount of water to be used by each township, the County Judge, upon the application of the Commissioners, shall determine the amount of water due each township.

SEC. 9. The Commissioners and Overseers shall be allowed two dollars per day for each day actually engaged in the discharge of the duties required by this Act, and for the payment of the same the Commissioners are hereby authorized to levy a tax within the county upon those persons benefited, in proportion to the amount of water used by each, which tax shall be collected by the Overseers, and paid over to the Commissioners, who shall disburse the same as required by this section.

SEC. 10. When water rises upon land owned by any person, it shall not be subject to the provisions of this Act, but in all cases after it has passed beyond the limits of said lands, it may be used as provided in this Act.

SEC. 11. In all cases, the Commissioners shall have the right of way to cut ditches and watercourses through their county.

SEC. 12. In case any person shall be damaged by the breaking of any ditch, the parties using such ditch shall be liable for damages.

SEC. 13. No person or persons shall direct the water of any river, creek or stream from its natural channel to the detriment of any person or persons using said water below, from any such river, creek or stream.

Any person who may settle, or who may have settled, on any such watercourses, as aforesaid, when the water has all been used for irrigation by any prior occupant to his or her detriment on any such stream, shall be guilty of a misdemeanor, and shall be subject to the provisions of section sixteen of this Act.

SEC. 14. Any person who, under this Act, shall conduct water by ditch or otherwise across the lands of another, such compensation as may be agreed upon by the parties concerned shall be paid to the owner of such lands; and in case the parties cannot agree, each party shall choose one arbitrator, and the two so chosen shall choose a third; the arbitrators shall assess, under oath, the amount of damages thus sustained, and their decision shall be final in the premises.

SEC. 15. The streams at the foot of the mountains north of the city of San Bernardino, known as Twin Creeks, are hereby incorporated and secured for the sole benefit and exclusive use of said city, subject to the provisions of this Act.

SEC. 16. Any person using the water from any of the ditches in the county, when it is not his right to do so, to the detriment of others, and any person obstructing the water of any of said ditches, either by dams or otherwise, or who shall throw or cause to be thrown therein any filth of any description, or permit to run therein any hogs, ducks, or geese, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than fifty or less than twenty-five dollars for the first offense, and not less than fifty or more than one hundred dollars for every subsequent offense, and imprisonment in the County Jail not more than twenty-five nor less than ten days, or by both such fine and imprisonment. All moneys recovered as fines under the provisions of this section, shall be applied by the Commissioners for the payment of Overseers' salaries, or repairing said ditches; those violating the provisions of this section shall be

prosecuted before any court of competent jurisdiction in the county or township, upon the complaint of any person damaged by such violation; *provided*, the provisions of this section shall not apply to the running in said watercourses any ducks, geese or hogs, except on those ditches or watercourses from which water is used for drinking or family use.

SEC. 17. There shall be kept running at all times, in those watercourses or ditches from which water is used for drinking or family use, a sufficient quantity to supply said demand.

SEC. 18. An Act entitled an Act to create a Board of Water Commissioners in the County of San Bernardino, and to define their duties, approved March sixth, eighteen hundred and fifty-seven, and also, an Act entitled an Act amendatory of and supplemental to an Act entitled an Act to create a Board of Water Commissioners in the County of San Bernardino, and define their duties, approved March sixth, eighteen hundred and fifty-seven, approved April twelfth, eighteen hundred and fifty-nine, are hereby repealed.

SEC. 19. This Act shall take effect and be in force in thirty days after its passage.

AN ACT

To create a Board of Commissioners in the County of Tulare, to define their Powers and Duties, and to appropriate Money for the purposes thereof.

[Approved March 15, 1864. Statutes 1863-4, p. 167.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. A Board of Commissioners is hereby created in the County of Tulare, consisting of John M. Browne, George E. Long, and William R. Owen, who shall have power, and they are by this Act authorized,

to open the old channel of the Kawiah River where practicable, and otherwise to cut a new channel therefor, through townships number eighteen south, in ranges twenty-five, twenty-six, and twenty-seven, Mount Diablo base and meridian, from any point they may select near the foot-hills of the Sierra Nevada Mountains to the most practicable point near the town of Visalia, east or west therefrom.

SEC. 2. Said Board shall have power to contract for the whole or any part of the work contemplated in the preceding section, or personally superintend its execution; and all contracts connected therewith for the payment of money, shall be deemed to have been made payable, and shall be paid in gold and silver currency.

SEC. 3. Said Commissioners shall report once in every sixty days to the Board of Supervisors of Tulare County, the amount of all moneys received by them, by donation or otherwise, as well as the amount by them expended, and such report shall be verified by oath or affirmation of one of their number, and upon the completion of the work authorized in section one of this Act, shall submit, under oath or affirmation of the whole Board, a full, true, and perfect report, accompanied with vouchers, of all moneys received and expended, and pay over any balance (if any there be) in their hands, which balance shall be applied by the Board of Supervisors towards the construction of any bridge or bridges which may be rendered necessary by reason of the work aforesaid.

SEC. 4. Before entering upon the discharge of their duties, each Commissioner shall execute a bond in the sum of two thousand dollars, or the three may execute a joint and several bond in the sum of six thousand dollars, with two or more sufficient sureties, to be approved by the Board of Supervisors, conditioned for the faithful disbursement of all moneys which may come into their hands, and the discharge of all duties required by this Act. Said bond or bonds shall be made

payable to the State of California, and when approved shall be filed in the office of the County Recorder of Tulare County. Actions may be maintained on said bond or bonds in the name of the People of the State of California, to and for the use and benefit of any person or persons sustaining injury by reason of any breach of condition.

SEC. 5. The sum of three thousand dollars is hereby appropriated, out of any money in the Swamp Land Fund, not otherwise appropriated, to aid in carrying into effect the provisions of section one of this Act; and upon presentation to the Controller of State, a certificate of the Board of Supervisors of Tulare County, reciting the fact that said Commissioners are duly qualified to enter upon the discharge of their duties, together with a requisition signed by said Commissioners, the Controller is hereby authorized and required to draw his warrant on the Treasurer of State in favor of said Commissioners for the sum of three thousand dollars, and the Treasurer is hereby authorized and required to pay the same, as provided in the preceding part of this section; *provided*, said appropriation shall be considered as funds belonging to and expended for the benefit of any Swamp Land District which may be hereafter created in which the townships and ranges mentioned in section one of this act are embraced.

SEC. 6. All moneys due or owing Swamp Lands in the townships and ranges mentioned in section one, and which may be paid into the County Treasury of Tulare County within twelve months from the passage of this Act, is hereby appropriated for the like purpose mentioned in the preceding section, and upon the order of the Board of Supervisors, the County Treasurer of Tulare County shall pay the same to said Commissioners, whose receipt, together with said order, shall be a sufficient voucher to the Treasurer of State, and shall be counted as so much money paid into the Swamp Land Fund; and the Treasurer of State may enter a

charge upon his books against said Fund upon such voucher, as so much money paid out of said Fund by virtue of the provisions of this Act.

SEC. 7. Should any vacancy or vacancies occur in said Board of Commissioners, the Board of Supervisors may fill the same by appointment, on the recommendation of the remaining Commissioner or Commissioners, and such new Commissioner or Commissioners shall qualify as provided in section four of this Act.

SEC. 8. Said Commissioners may sue and be sued in their capacity of Commissioners as though they were a corporate body, and all judgments against or in their behalf, shall be liquidated in gold and silver currency.

SEC. 9. This Act shall not be so construed as to affect the vested rights of any person or persons to the waters of said Kawiah River for purposes of irrigation.

SEC. 10. This Act shall take effect and be in force from and after its passage.

AN ACT

To authorize Phineas Banning, his associates and assigns, to construct a Watercourse from San Gabriel River to Camp Drum and the Town of Wilmington, in Los Angeles County.

[Approved April 1, 1864, Statutes 1863-4, p. 289.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION. 1. Phineas Banning, his associates and assigns, are hereby authorized and empowered to construct a watercourse, consisting of ditches and flumes, for the purpose of conducting a stream of water from San Gabriel River to Camp Drum and the Town of Wilmington, Los Angeles County, with which to supply said camp and town with water for domestic uses and irrigation.

SEC. 2. The said grantee, his associates and assigns, are authorized and empowered hereby to commence said watercourse from the right bank of the said San Gabriel River, at a point where a due east line drawn three miles north of the houses of Dominguez intersects said river, or at any convenient place near said point above or below on said river, and running through and over the lands of the rancho of Don Manuel Dominguez and others, known as Rancho de San Pedro, in such direction as the conformation of the ground and the nature of the soil shall render necessary or convenient, with the privilege of procuring the right of way over said lands for said purpose, and along the line of said watercourse for the further purpose of inspecting and repairing the same, said right of way to be acquired in manner prescribed in the general laws of this State concerning the formation and incorporation of railroads.

SEC. 3. The said grantee and others shall also have the power to construct a dam at the head of said watercourse across the San Gabriel River, of a height necessary to divert a sufficient quantity of water from the said river into the said watercourse, for the uses and purposes herein named.

SEC. 4. In consideration of the rights and privileges herein granted, the said grantee, his associates and assigns, shall, within six months after the passage of this Act, commence and prosecute in good faith the work necessary to be performed in making the proper excavations and constructing the flumes and building the dam and other requisite improvements in such cases, and shall within one year thereafter so far complete the said works as to be able to supply said Camp Drum and Town of Wilmington and their inhabitants with water.

SEC. 5. The rates to be charged for water by said grantee, his associates and assigns, shall be such as

may be determined in accordance with the provisions of the law in such cases made and provided.

SEC. 6. This Act shall take effect from and after its passage.

AN ACT

To create a Board of Water Commissioners in Tulare County, and to define their powers and duties.

[Approved April 4, 1864. Statutes 1863-4, p. 375.]

The People of the State of California represented in Senate and Assembly, do enact as follows:

SECTION 1. There shall be elected at the next election held in the County of Tulare for the election of a member of the Board of Supervisors, three Water Commissioners, who shall hold their offices until the next general election and until their successors are elected and qualified, and at each general election thereafter there shall be elected three such Commissioners, who shall hold their offices for the term of two years and until their successors are elected and qualified; and until the first election herein provided for, William C. Owen, William Ogden, and Forrest G. Jefferds shall constitute such Board of Water Commissioners, which Board shall have the powers and perform the duties hereinafter provided. In case a vacancy should occur in said Board, by death or otherwise, it shall be filled by the Board of Supervisors of said county by appointment, and each member shall, before entering upon the duties of his office, and within ten days after the reception of notice of his election or appointment, qualify, by giving a bond to the satisfaction of the Board of Supervisors in the sum of one thousand dollars, for the proper disposal of all moneys which may come into his

possession, and for the proper performance of his duties.

SEC. 2. The duties of said Commissioners shall be as follows:

First—They shall elect one of their number Chairman, and one as Clerk of the Board; they shall, from time to time, appoint as many Overseers as they may deem necessary for the construction of the water ditches and the care of watercourses, and define the boundaries within which they shall act in the county, and they may revoke such appointments at pleasure.

Second—Upon a petition of a majority of the citizens of any district or neighborhood, they shall lay out such ditch or ditches as may be necessary to irrigate the land in cultivation in the district, and apportion the water in the same to each individual in proportion to the land cultivated by each; *provided*, that should the water be insufficient for a continuous supply to all, the Commissioners shall, upon the petition of a majority of those interested, re-apportion the same without prejudice to any.

Third—No ditch shall hereafter be taken out of any stream in the waters of which different persons have an interest, without leave of said Commissioners; and upon the receipt of an estimate from the Overseers, or upon an estimate of their own, of the number of days work necessary to construct or repair any ditch and of the amount of land proposed to be irrigated by each individual using water therefrom, the Commissioners shall apportion such labor amongst those interested in proportion to the amount of water required by each, and should such labor fail to complete the work, they may immediately make a new assessment in the same proportion.

Fourth—They shall, as soon as they have apportioned the water, make a schedule of the hours which each person is entitled to use the same, commencing at the

head of each ditch, and also the amount of labor performed or to be performed, and a copy of said schedule shall be posted at the head of the ditch, and such apportionment shall be binding, unless modified by the unanimous consent of those interested.

Fifth—A book shall be furnished by the Board of Supervisors of said county in which said Commissioners shall keep a full record of all official acts of said Board, which shall be open to the inspection of any citizen, and shall be delivered over to their successors in office.

SEC. 3 It shall be the duty of the Overseers to execute the orders of the Commissioners, to examine on or before the first day of February in each year the various ditches in their districts, make an estimate of the amount of labor necessary to put them in good repair, and report the same to the Board, together with the capacity of said ditches and the amount of land to be irrigated thereby, to see that the water is properly used as apportioned, that the ditches are kept in good repair, and that the labor required is properly expended.

SEC. 4. Said Overseers shall, each, keep a correct account of all work done under his supervision, and by whom, and any person who shall neglect or refuse to perform their proportion of work after having received three days notice to do so, shall pay the sum of ten dollars for each day's labor due from him, which shall be recovered at the suit of the Overseer, with costs of suit, before any Court of competent jurisdiction in the county or township, and all such money shall be applied to the construction or repair of the ditch upon which the labor was due; *provided*, that when any ditch shall break so as to cause a loss or wastage of water, those interested shall respond immediately to the notice of the Overseer for the repair of the same under the same under the same conditions as to delinquencies already provided in this section.

SEC. 5. Eight hours labor shall constitute a day's work; a team of two horses shall be equivalent to one day's work; a plough, wagon, or scraper, shall each, when used, be equal to one half day's work; and when required by the Overseer, persons shall, if practicable, furnish such implements as shall be necessary to the work.

SEC. 6. In case any district or person shall consider that the water has not been properly apportioned, or in case the Commissioners cannot agree upon the apportionment, the matter may be referred to the County Judge, who shall determine the matter in contest.

SEC. 7. The Commissioners and Overseers shall each be allowed and paid two dollars for each day actually employed in the discharge of the duties required by this Act, and for the purpose of paying the same the Commissioners are hereby authorized to levy a tax within the county upon each person benefited in proportion to the amount of water used by each, which tax shall be collected by the Overseers and paid over to the Commissioners, who shall disburse the same as required by this section, and the general laws for the collection of taxes, so far as necessary and practicable, and made applicable to the collection of this tax.

SEC. 8. The Commissioners shall have the right of way to lay out and construct ditches through any lands in the county, and any person damaged thereby, or by the water of any ditch, shall be entitled to such compensation as may be agreed upon between the parties interested; and in case the parties cannot agree each party shall choose one Arbitrator, and the two so chosen shall choose a third, and such Arbitrators shall assess the damages sustained, under oath, which sum shall be paid by the parties using the water in proportion to the amount each is entitled to use, and the decision of said Arbitrators shall be final.

SEC. 9. Any person using water from any ditch or water course in the county to which he is not entitled

in accordance with the provisions of this Act, to the detriment of others, or who shall obstruct the waters of any watercourse or ditch by any dam or otherwise, or who shall wontonly break or injure any ditch, or who shall obstruct or hinder any Overseer in the performance of his duty, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred and not less than twenty dollars for the first offense, and not more than three hundred nor less than fifty dollars for every subsequent offense, or imprisonment in the County Jail for not more than thirty nor less than five days, or by both such fine and imprisonment. Any person violating the provisions of this section shall be prosecuted before any Court of competent jurisdiction in the county or township, upon the complaint of any person aggrieved or by any member of the Board of Commissioners, and all moneys collected as fines under the provisions of this section shall be applied by the Commissioners to the payment of Overseers and the repair of the ditches which may have been damaged.

SEC. 10. When water rises upon lands owned by any person, it shall not be subject to the provisions of this Act until it shall have passed beyond the limits of said land; and no person or persons shall divert the waters of any river or stream from its natural channel, to the detriment of any person or persons located below them on the same stream.

SEC. 11. This Act shall in no way interfere with or affect the powers or action of the Board of Commissioners created by an Act entitled an Act to create a Board of Commissioners in the County of Tulare, to define their powers and duties, and to appropriate money for the purposes thereof, approved March fifteenth, eighteen hundred and sixty-four.

SEC. 12. All Acts of a general character conflicting with the provisions of this Act, so far as applicable to the County of Tulare, are hereby repealed.

SEC. 13. This Act shall take effect immediately.

AN ACT

To amend an Act entitled an Act to create a Board of Water Commissioners in the County of San Bernardino, and to define their duties, approved February eighteenth, eighteen hundred and sixty-four.

[Approved, February 14, 1866, Statutes 1865-6, p. 93.]

The People of the State of California, represented in Senate and Assembly do enact as follows :

SECTION 1. Section two of said Act is hereby amended so as to read as follows:

[Section 2.] The duties of the above Commissioners shall be:

First.—They shall appoint as many Overseers as they may deem necessary for the proper regulation of the watercourses and ditches in said county, and shall have power to revoke the same at pleasure.

Second.—Upon a petition of a majority of those interested, or who own legitimate claims on any ditch, they shall lay out any ditch or ditches, and apportion the water thereof among the persons using the same in proportion to the amount of land each person may wish to irrigate, provided there should be water sufficient in said ditch for the irrigation of all said lands; but in case there should not be a sufficient amount of water for said irrigation in any such ditch, upon a petition of a majority of those holding such interests as aforesaid, the Water Commissioners shall immediately re-apportion, without prejudice to any prior occupation, the water thereof; and any person who shall have put in for more land to irrigate than his proportion according to the pro rata of water in the ditch or stream from which he is furnished with water, a re-apportionment shall immediately be made as provided in this section.

Third.—Upon the receipt of the returns of the

Overseers of the number of acres to be irrigated and the amount of water in said ditch to be used for irrigating purposes, and the probable number of days' work required to be done on any ditch in that season, they shall apportion the work thereof among the persons required to perform the same.

Fourth.—They shall, as soon as they have apportioned the water, make a schedule, stating the hours that each person shall be entitled to use the water, commencing at the head of each ditch; also opposite the name of each person the number of days' work he shall be required to perform.

Fifth.—They shall keep a book in which they shall record in full all the official acts of said Board, which book shall be furnished by the Board of Supervisors at the expense of the county, and shall be transferred to their successors in office.

SEC. 2. Section four of said Act is hereby amended so as to read as follows:

Section 4. Said Overseers shall, on or before the first day of February in each year, examine the ditches their entire length, and make an estimate of the number of days work required to put such ditch in good repair and of sufficient capacity to hold and carry all the water that may be required to pass through them, and report the same to the Commissioners, together with the amount of land to be irrigated, and the amount of water in each ditch; and it is further made the duty of said Overseers to cause any person or persons cutting or leading a water ditch over any public road or highway, to bridge the same, and to cause necessary gates to be placed in intersecting ditches. In such cases, the Overseer shall give ten days notice to said parties, and if they should then fail to comply with the provisions of this section, shall be subject to a conviction for misdemeanor as provided in section sixteen of said Act.

SEC. 3. Section sixteen of said Act is hereby amended so as to read as follows:

Section 16. Any person using the water from any of the ditches in the county, when it is not his right to do so, to the detriment of others, and any person obstructing the water of any of said ditches, either by dams or otherwise, or who shall throw or cause to be thrown therein any filth of any description, or permit to run therein any hogs, ducks or geese, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than fifty nor less than twenty-five dollars for the first offense, and not less fifty or more than one hundred dollars for every subsequent offense, and imprisonment in the County Jail not more than twenty-five nor less than ten days, or by both such fine and imprisonment. All moneys recovered as fines under the provisions of this section shall be applied by the Commissioners for the payment of Overseers' salaries or repairing said ditches. Those violating the provisions of this section shall be prosecuted before any Court of competent jurisdiction in the county or township, upon the complaint of any person damaged by such violation; *provided*, the provisions of this section shall not apply to the running in said water courses any ducks, geese or hogs, except on those ditches or watercourses from which water is used for drinking or family use; and it is hereby made the duty of the District Attorney to prosecute all cases arising under this section, and shall be allowed for his services in each conviction the sum of ten dollars, collected from the person or persons convicted.

SEC. 4. This Act shall take effect and be in force from and after its passage.

AN ACT

To amend an Act entitled an Act to create a Board of Water Commissioners in Tulare County, and to define their powers and duties, approved April fourth, eighteen hundred and sixty-four.

[Approved, March 20, 1866. Statutes 1865-6, p. 313.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section two of said Act is hereby amended so as to read as follows:

Section 2. The duties of said Commissioners shall be as follows:

First—They shall elect one of their number Chairman, and one as Clerk of the Board. They shall, upon petition in writing of a majority of the owners in any water ditch, appoint the person designated in such petition as Overseer of said ditch.

Second—No ditch shall hereafter be taken out of any stream in the waters of which different persons have an interest, without leave of said Commissioners.

Third—A book shall be furnished by the Board of Supervisors of said county, in which said Commissioners shall keep a full record of all official acts of said Board, which shall be open to the inspection of any citizen, and shall be delivered over to their successors in office.

SEC. 2. Section three of said Act is hereby amended so as to read as follows:

Section 3. It shall be the duty of the Overseers to execute the orders of the persons employing them.

SEC. 3. Section 4 of said Act is hereby amended so as to read as follows:

Section 4. The Commissioners shall each be allowed and paid two dollars for each day actually employed in

the discharge of the duties required by the provisions of this Act, which shall be paid to them by the parties requiring their services. The Overseers shall receive such compensation as may be agreed upon between them and the parties employing them.

SEC. 4. Section five of said Act is hereby amended so as to read as follows:

Section 5. Each Overseer shall, every three months (each counting from the day of his appointment), make up a statement in writing of the number of days that he has been engaged in the discharge of his duties, together with the amount due him as compensation therefor, and upon the approval of the same by the President or authorized agent of the company employing him, shall apportion the same to the different members of such company, pro rata, in proportion to the interest of each therein; and thereupon shall have the right of action against each owner in the ditch for which he is Overseer for the amount so apportioned to such owner.

SEC. 5. Section six of said Act is hereby amended so as to read as follows:

Section 6. The owners of water ditches may make such rules and regulations for the government of their several companies, not repugnant to the Constitution and laws of the State of California, as a majority of them may deem just and proper, and elect such officers for the transaction of their business as they may require; *provided*, that in all meetings of water ditch companies, each owner shall be entitled to a vote in proportion to his interest.

SEC. 6. Section seven of said Act is hereby amended so as to read as follows:

Section 7. Whenever a majority in interest of the owners in any ditch company, or their authorized agent, shall deem it necessary to repair, enlarge, or extend their ditch, they shall cause a notice, either written or

verbal, to be served upon each owner therein, specifying a time to commence work thereon; and any owner therein neglecting or refusing to perform his proportion of such labor, or pay his proportion of the cost thereof, shall forfeit his right to [the] use of any water from such ditch until such time as he pays the same to the person or persons performing his proportion of such labor, together with ten per cent. per month thereon additional. The number of hours constituting a day's labor and the value thereof shall be determined by the respective water ditch companies ie the rules and regulations they may severally adopt. Leaving the notice contemplated in this section at the residence of any owner in a ditch company, with any member of his family over the age of fifteen years, shall be deemed a sufficient service. For the purpose of this Act, every person owning an interest in any water ditch, or owning any interest in the water therein, shall be considered a member of such water ditch company.

SEC. 7. This Act shall take effect and be in force from and after its passage.

AN ACT

To develop the agricultural interests and to aid in the construction of a canal for the purposes of irrigation and inland trade in the Counties of Colusa, Yolo and Solano.

[Approved March 26, 1866. Statutes 1865-6, p. 451.]

The People of the State of California, represented in Senate and Assembly, do enact as follows :

SECTION. 1. The Governor of the State of California, the Surveyor-General, and the Attorney-General, are

authorized to cause a survey to be made of a route for a canal from some point on the Sacramento River, near the county line of Colusa and Tehama, to some point on the navigable waters of Cache Creek Slough, in the County of Solano. They shall appoint a competent engineer, who shall make a careful and exact survey of the route designated, and return under oath if a practicable one can be found for a canal for the purposes of irrigation, as well as ordinary canal navigation, with maps of the route and plans and specifications of the estimated cost of the work.

SEC. 2. R. J. Walsh, of Colusa, Jerome C. Davis, of Yolo, and Andrew M. Stevenson, of Solano, and their associates, are hereby authorized to form themselves into a body corporate for the construction of said canal, under the provisions of an Act entitled an Act to authorize the incorporation of canal companies and the construction of canals, approved May fourteenth, eighteen hundred and sixty-two. Said corporation shall be known as the Sacramento Irrigation and Navigation Canal Company. The objects of the said canal shall be the irrigation of the lands in said counties, the transportation of agricultural products, and the security from inundation of the swamp lands in the Sacramento Valley.

SEC. 3. The report of the engineer, with the plans, specifications, and estimates, shall be submitted to the Governor, Surveyor-General and Attorney-General, for their approval, and be filed in the office of the Secretary of State. The said engineer shall also furnish a copy of the same to the President of the said company.

SEC. 4. To aid in the survey and construction of said canal, upon the approval by the Governor, Surveyor-General, and Attorney-General, of the maps, plans and estimates of the engineer, or by a majority of them, of the said maps, plans, and estimates, there shall be paid out of any money in the General Fund not otherwise appropriated, all engineering expenses

for the cost of said survey, not to exceed the sum of eight thousand dollars; and the Controller of State is hereby authorized to draw his warrant in favor of said engineer for such sums, upon the approval by the Governor, Surveyor-General, and Attorney-General, or a majority of them, certified to by the President of the company.

SEC. 5. This Act shall be in force from and after its passage.

AN ACT

To create a Board of Water Commissioners in Siskiyou County, and to define their powers and duties.

[Approved March 31, 1866. Statutes 1865-6, p. 609.]

The People of the State of California, represented in Senate and Assembly, do enact as follows :

SECTION 1. There shall be elected, at the next election held in the County of Siskiyou, for the election of county officers, three Water Commissioners in each Supervisor District of said county, who shall hold their offices for the term of two years from the first Monday in January next ensuing after their election and until their successors are elected and qualified; and until the first election herein provided for, E. Steele, Horace Knights and C. J. Dorris shall constitute a Board of Water Commissioners for Supervisor District Number Three; and A. Groat, J. H. Ellis, and George Durand shall constitute a Board of Water Commissioners for Supervisor District Number Two; and John McConaughy, P. A. Hartstrand, and H. J. Diggles shall constitute a Board of Water Commissioners for Supervisor District Number One; which Boards shall have the powers and perform the duties hereinafter provided.

In case a vacancy should occur in said Board or Boards, by death or otherwise, it shall be filled by the Board of Supervisors of said county by appointment, and each member shall, before entering upon the duties of his office, and within ten days after the reception of notice of his election or appointment, qualify by giving a bond to the satisfaction of the Board of Supervisors in the sum of five hundred dollars, for the proper disposal of all moneys which may come into his possession, and for the proper performance of his duties.

SEC. 2. The duties of said Commissioners shall be as follows:

First—They shall elect one of their number Chairman, and one as Clerk of the Board. They shall from time to time appoint as many Overseers as they may deem necessary for the construction of the water ditches and the care of watercourses, and define the boundaries within which they shall act in the county, and they may revoke such appointments at pleasure.

Second—Upon the petition of a majority of the citizens of any district or neighborhood, they shall lay out such ditch or ditches as may be necessary to irrigate the land in cultivation in the district, and apportion the water in the same to each individual in proportion to the land in cultivation by each; *provided*, that should the water be insufficient for a continuous supply to all, the Commissioners shall, upon the petition of a majority of those interested, reapportion the same without prejudice to any.

Third—No ditch shall hereafter be taken out of any stream in the waters of which different persons have an interest, without leave of said Commissioners; and upon the receipt of an estimate from the Overseers, or upon an estimate of their own, of the number of days' work necessary to construct or repair any ditch, and of the amount of land proposed to be irrigated by each individual using water therefrom, the Commissioners shall apportion such labor amongst those interested in

proportion to the amount of water required by each, and should such labor fail to complete the work, they may immediately make a new assessment in the same proportion.

Fourth—They shall, as soon as they have apportioned the water, make a schedule of the amount of water, or the hours in which each person is entitled to use the same, commencing at the head of each ditch, and also the amount of labor performed or to be performed, and a copy of said schedule shall be posted at the head of the ditch, and such apportionment shall be binding, unless modified by the unanimous consent of those interested.

Fifth—A book shall be furnished by the Board of Supervisors of said county, in which said Commissioners shall keep a full record of all official acts of said Board, which shall be open to the inspection of any citizen, and shall be delivered over to their successors in office.

SEC. 3. It shall be the duty of the Overseers to execute the orders of the Commissioners, to examine, on or before the first day of March in each year, the various ditches in their districts, make an estimate of the amount of labor necessary to put them in good repair, and report the same to the Board, together with the capacity of said ditches, and the amount of land to be irrigated thereby, to see that the water is properly used as apportioned, that the ditches are kept in good repair, and that the labor required is properly expended.

SEC. 4. Said Overseers shall each keep a correct account of all work done under his supervision, and by whom; and any person interested in said ditch who shall neglect or refuse to perform their proportion of work after having received three days' notice to do so, shall pay the sum of ten dollars for each day's labor due from him, which shall be recovered at the suit of

the Overseer, with costs of suit, before any Court of competent jurisdiction in the county or township; and all such money shall be applied to the construction or repair of the ditch upon which the labor was due; *provided*, that when any ditch shall break, so as to cause a loss or wastage of water, those interested shall respond immediately to the notice of the Overseer for the repair of the same, under the same conditions as to delinquencies already provided for in this section.

SEC. 5. Eight hours' labor shall constitute a day's work. A team of two horses shall be equivalent to one day's work. A plough, wagon, or scraper, shall each, when used, be equal to one half day's work. And when required by the Overseer, persons shall, if practicable, furnish such implements as shall be necessary to the work.

SEC. 6. In case any district or person shall consider that the water has not been properly apportioned, or in case the Commissioners cannot agree upon the apportionment, the matter may be referred to the County Judge of said county, who shall determine the matter in contest.

SEC. 7. The Commissioners and Overseers shall each be allowed and paid two dollars for each day actually employed in the discharge of their duties required by this Act; and for the purpose of paying the same, the Commissioners are hereby authorized to levy a tax within the county upon each person benefited, in proportion to the amount of water used by each; which tax shall be collected by the Overseers and paid over to the Commissioners, who shall disburse the same as required by this section; and the general laws for the collection of taxes are made applicable to the collection of this tax; *provided*, that the Board of Supervisors may limit the amount paid to each Commissioner or Overseer.

SEC. 8. The Commissioners shall have the right of way to lay out and construct ditches through any lands

in their respective counties, and any persons damaged thereby, or by the water of any ditch, shall be entitled to such compensation as may be agreed upon between the parties interested; and in case the parties cannot agree, each party shall choose one arbitrator, and the two so chosen shall choose a third, and such arbitrators shall assess the damages sustained, under oath, which sum shall be paid by the parties using the water in proportion to the amount each is entitled to use, and the decision of said arbitrators shall be final.

SEC. 9. Any person using water from any ditch or watercourse in the county to which he is not entitled in accordance with the provisions of this Act, to the detriment of others, or who shall obstruct the waters of any watercourse or ditch by any dam or otherwise, or who shall wantonly break or injure any ditch, or who shall obstruct or hinder any Overseer in the performance of his duty, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding one hundred and not less than twenty dollars for the first offense, and not more than three hundred nor less than fifty dollars for every subsequent offense, or imprisonment in the County Jail for not more than thirty nor less than five days, or by both such fine and imprisonment. Any person violating the provisions of this section, shall be prosecuted before any Court of competent jurisdiction in the county or township, upon the complaint of any person aggrieved, or by any member of the Board of Commissioners; and all moneys collected as fines under the provisions of this section, shall be applied by the Commissioners to the payment of Overseers, and the repair of the ditches which may have been damaged.

SEC. 10. When water rises upon lands owned by any person, it shall not be subject to the provisions of this Act until it shall have passed beyond the limits of said lands; and no person or persons shall divert the waters of any river or stream from its natural channel

to the detriment of any person or persons located below them on the same stream.

SEC. 11. All Acts of a general character conflicting with the provisions of this Act, so far as applicable to the County of Siskiyou, are hereby repealed.

SEC. 12. This Act shall take effect and be in force from and after its passage.

AN ACT

To create a Board of Water Commissioners in Fresno County, and to define their powers and duties.

[Approved April 2, 1866. Statutes 1865-6, p. 777.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. There shall be elected at the next election held in the County of Fresno for the election of a member of the Board of Supervisors, three Water Commissioners, who shall hold their offices until the next general election, and until their successors are elected and qualified; and at each general election thereafter there shall be elected three such Commissioners, who shall hold their offices for the term of two years, and until their successors are elected and qualified; and until the first election herein provided for, James Tucker, John Bubb and Daniel Rhodes, shall constitute such Board of Water Commissioners, which Board shall have the power and perform the duties hereinafter provided. In case a vacancy should occur in said Board by death or otherwise, it shall be filled by the Board of Supervisors of said county by appointment; and each member shall, before entering upon the duties of his office, and within ten days after the reception of notice of his election or appointment, qualify by giving a bond to the satisfaction of the

Board of Supervisors, in the sum of one thousand dollars, for the proper disposal of all moneys which may come into his possession, and for the proper performance of his duties.

SEC. 2. The duties of said Commissioners shall be as follows:

First—They shall elect one of their number as Chairman, and one as Clerk of the Board; they shall, from time to time, appoint as many Overseers as they may deem necessary for the construction of the water ditches, and the care of the watercourses, and define the boundaries within which they shall act in the county; and they may revoke such appointments at pleasure.

Second—Upon the petition of a majority of the citizens of any district or neighborhood, they shall lay out such ditch or ditches as may be necessary to irrigate the land in cultivation in the district, and apportion the water in the same to each individual in proportion to the land in cultivation by each; *provided*, that should the water be insufficient for a continuous supply to all, the Commissioners shall, upon a petition of a majority of those interested, re-apportion the same without prejudice to any.

Third—No ditch shall hereafter be taken out of any stream in the waters of which different persons have an interest without leave of said Commissioners; and upon a receipt of an estimate from the Overseers, or upon an estimate of their own, of the number of days' work necessary to construct or repair any ditch, and the amount of land proposed to be irrigated by each individual using water therefrom, the Commissioners shall apportion such labor amongst those interested in proportion to the amount of water required by each; and should such labor fail to complete the work, they may immediately make a new assessment in the same proportion.

Fourth—They shall, as soon as they have apportioned the water, make a schedule of the hours which each person is entitled to use the same, commencing at the head of each ditch; and also the amount of labor performed or to be performed; and a copy of said schedule shall be posted at the head of the ditch; and such apportionment shall be binding, unless modified by the unanimous consent of those interested.

Fifth—A book shall be furnished by the Board of Supervisors of said county, in which said Commissioners shall keep a full record of all official acts of said Board, which shall be open to the inspection of any citizen, and shall be delivered over to their successors in office.

SEC. 3. It shall be the duty of the Overseers to execute the orders of the Commissioners; to examine, on or before the first day of February in each year, the various ditches in their districts; make an estimate of the amount of labor necessary to put them in good repair, and report the same to the Board, together with the capacity of said ditches, and the amount of land to be irrigated thereby; to see that the water is properly used as apportioned, that the ditches are kept in good repair, and that the labor required is properly expended.

SEC. 4. Said Overseers shall each keep a correct account of all work done under his supervision and by whom; and any person who shall neglect or refuse to perform their proportion of work after having received three days' notice to do so, shall pay the sum of ten dollars for each day's labor due from him, which shall be recovered at the suit of the Overseer, with costs of suit, before any Court of competent jurisdiction in the county or township, and all such money shall be applied to the construction or repair of the ditch upon which the labor was due; *provided*, that when any ditch shall break so as to cause a loss or wastage of water, those interested shall respond immediately to the

notice of the Overseers for the repair of the same, under the same condition as to delinquencies already provided for in this section.

SEC. 5. Eight hours' labor shall constitute a day's work; a team of two horses shall be equivalent to one day's work; a plough, wagon, or scraper, shall each, when used, be equal to one half day's work; and when required by the Overseers, persons shall, if practicable, furnish such implements as shall be necessary to the work.

SEC. 6. In case any district or person shall consider that the water has not been properly apportioned, or in case the Commissioners cannot agree upon the apportionment, the matter may be referred to the County Judge of the county, who shall determine the matter in contest.

SEC. 7. The Commissioners and Overseers shall each be allowed and paid two dollars for each day actually employed in the discharge of their duties required by this Act, and for the purpose of paying the same the Commissioners are hereby authorized to levy a tax within the county, upon each person benefited, in proportion to the amount of water used by each, which tax shall be collected by the Overseer and paid over to the Commissioners, who shall disburse the same as required by this section; and the general laws for the collection of taxes are made applicable to the collection of this tax.

SEC. 8. The Commissioners shall have the right of way to lay out and construct ditches through any lands in said county, and any person damaged thereby or by the water of any ditch, shall be entitled to such compensation as may be agreed upon between the parties interested; and in case the parties cannot agree, each party shall choose an arbitrator, and the two so chosen shall choose a third, and such arbitrators shall assess the damages sustained, under oath, which sum shall be paid by the parties using the water in proportion to the

amount each is entitled to use, and the decision of said arbitrators shall be final, and such decision shall have the force and effect of a judicial decision.

SEC. 9. Any person using water from any ditch or water-course in the county, to which he is not entitled in accordance with the provisions of this Act, to the detriment of others, or who shall obstruct the waters of any water-course or ditch by any dam or otherwise, or who shall wantonly break or injure any ditch, or who shall obstruct or hinder any Overseer in the performance of his duty, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding one hundred and not less than twenty dollars for the first offense, and not more than three hundred and not less than fifty dollars for every subsequent offense, or imprisonment in the County Jail for not more than thirty nor less than five days, or by both such fine and imprisonment. Any person violating the provisions of this section shall be prosecuted before any Court of competent jurisdiction in the county or township upon the complaint of any person aggrieved, or by any member of the Board of Commissioners, and all moneys collected as fines under the provisions of this section shall be applied by the Commissioners to the payment of Overseers and the repair of the ditches which may have been damaged.

SEC. 10. When water rises upon lands owned by any person it shall not be subject to the provisions of this Act until it shall have passed beyond the limits of said land; and no person or persons shall divert the waters of any river or stream from its natural channel to the detriment of any person or persons located below them on the same stream.

SEC. 11. The provisions of this Act shall not in any manner interfere with, or render invalid, or inoperative, or in any way whatever embarrass or interrupt the acts heretofore done and performed by voluntary associations, or individuals may have constructed before the

passage of this Act; and, *provided*, further, that this Act shall not impair or interfere with the vested rights of such associations or individuals as aforesaid in any water ditch or water privilege, or the future exercise of such rights or privileges, in the county named in this Act.

SEC. 12. All Acts of a general character conflicting with the provisions of this Act, so far as applicable to the County of Fresno, are hereby repealed.

SEC. 13. This Act shall take effect and be in force from and after its passage.

AN ACT

To create the County of Kern to define its boundaries, and to provide for its organization.

[Approved April 2, 1866. Statutes 1865-6, p. 796.]

This county was erected out of the territory of Tulare and Los Angeles Counties, and for the portions thereof as taken from the respective counties the laws on the subject of irrigation remained unchanged until March 29, 1876.

AN ACT

To authorize William Smith, Lorenzo Hubbard, A. D. Starr, their associates and assigns, to construct a watercourse from the Yaba River to the City of Marysville.

[Approved April 2, 1866. Statutes 1865-6, p. 812.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. William Smith, Lorenzo Hubbard, A.

D. Starr, their associates and assigns, are hereby authorized to construct a watercourse, consisting of ditches, flumes, and dams, for the purpose of conducting a stream of water from the Yuba River, starting at a point about twelve miles from Marysville, at a point within a few rods of where the house of Kirkpatrick formerly stood, to the City of Marysville, and through said city to the head of the Fifth Street Slough, and also into the Yuba Street Slough, on the east side of the city, for the purposes of motive power and for irrigation.

SEC. 2. The said grantees, their associates and assigns, are hereby authorized to commence said water ditch at a point on the north bank of the Yuba River, to be selected between Sand Flat and the land owned by Wm. H. Drum, on said river; thence following the north bank of said river a distance of about one mile to a low gap; thence out through said gap into the plain; thence in such direction through and over the lands as the conformation of the ground and nature of the soil shall render necessary or convenient; with the privilege of procuring the right of way over said lands for said purposes, to be acquired in accordance with the general laws of the State granting rights to water companies.

SEC. 3. The said grantees, their associates and assigns, are also further authorized to construct all dams, make excavations, and build flumes of a sufficient capacity to divert and convey a sufficient quantity of water from said river into the said watercourse for the use and purpose herein named. They shall also construct and build suitable bridges over their ditch or watercourse wherever the same may cross any road, trail, street, alley or highway, and shall always and at all times keep the same in good repair.

SEC. 4. The franchise, and all rights herein granted, shall continue for the period of twenty years from and after the passage of this Act; *provided*, that the water-

course shall be completed within two years from the first day of May, A. D. eight hundred and sixty-six.

SEC. 5. Any person wilfully obstructing or in any manner damaging the said watercourse, or any portion thereof, shall be deemed guilty of a misdemeanor, and shall be punished as provided by law.

SEC. 6. The said grantees, their associates and assigns, shall be entitled to charge such rates for the water and the use thereof as may be established by the Board of Supervisors of the County of Yuba and three Trustees of the company.

SEC. 7. This Act shall take effect from and after its passage.

WATER RIGHT UNDER UNITED STATES LAWS.

[July 26, 1866, Section 2339, R. S.]

Whenever by priority of possessions, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of Courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

AN ACT

Concerning Water Ditches and Water Privileges for
Agricultural and Manufacturing Purposes in the
County of Tulare.

[Approved March 7, 1868. Statutes of 1867-8, p 112.]

*The People of the State of California, represented in
Senate and Assembly, do enact as follows:*

SECTION 1. The Board of Supervisors of the County of Tulare are hereby made *ex officio* Water Commissioners in and for said county; they shall have the power and shall perform the duties hereinafter set forth.

SEC. 2. They shall procure a suitable book, and their Clerk shall keep therein a full record of all their official acts as such Water Commissioners, which shall be open to the inspection of any citizen.

SEC. 3. No ditch shall hereafter be taken out of any stream, in the waters of which different persons have an interest by virtue of prior appropriation, without leave of said Commissioners.

SEC. 4. Any person or persons desiring to construct a ditch and appropriate water for agricultural or manufacturing purposes shall file a petition with said Commissioners, setting forth the stream from which they intend to take the water, the point where the proposed ditch will commence, its general course, and the proposed size thereof. Whereupon the said Commissioners may grant the right to construct said ditch and to use water sufficient to fill the same, for the uses and purposes set forth in said petition; *provided*, that nothing herein contained shall be so construed as to affect the rights and privileges of those who, by prior appropriation, have secured the right to the use of water from the several rivers and streams in Tulare County.

SEC. 5. Said Commissioners shall have power to grant the right of way to lay out and construct ditches through any lands in said county, and any person dam-

aged thereby, or by the water of any ditch, shall be entitled to such compensation as may be agreed upon between the parties interested; and in case the parties cannot agree, each party shall choose an arbitrator, and the two chosen shall choose a third; and such arbitrators shall assess the damages sustained, under oath, which sum shall be paid before the ditch is constructed by the parties using the water, in proportion to their several interests therein, and the decision of said arbitrators shall have the force and effect of a judicial decision; *provided*, that in case any of the parties herein shall refuse to choose an arbitrator, then the County Judge of Tulare County shall appoint such arbitrator, whose decision shall have the same force and effect as though he had been appointed by the party interested.

SEC. 6. The owners of water ditches may make such rules and regulations for the government of their several companies, not repugnant to the Constitution and laws of the State of California, as a majority of them may deem just and proper, and elect such officers for the transaction of their business as they may require; *provided*, that in all meetings of water ditch companies each owner shall be entitled to a vote in proportion to his or her interest therein.

SEC. 7. All water ditches shall be kept in good repair by the owners thereof; and any member of the said Board of Commissioners shall have power to close, or authorize any other person to close and shut off the water from any ditch not in good repair; and any person opening or turning in the water into such ditch before the same is repaired shall be deemed guilty of a misdemeanor.

SEC. 8. When any ditch shall break so as to cause a loss or wastage of water, or shall overflow its banks, any person shall have a right to notify, either verbally or in writing, any owner in the said ditch; and if the said ditch is not repaired within forty-eight hours after the time when such notice is given, then any person shall

have the right to repair said ditch, and shall have the right of action to recover, in any Court of competent jurisdiction, from the owners of said ditch, or any of them, double the cost of such repairs, together with costs of suit.

SEC. 9. Whenever a majority in interest of the owners in any ditch company, or their authorized agent, shall deem it necessary to repair, enlarge or extend their ditch, they shall cause a notice, either written or verbal, to be served upon each owner therein, specifying a time to commence work thereon; and any owner therein neglecting or refusing to perform his proportion of such labor or pay his proportion of the cost thereof, shall forfeit his right to the use of any water from such ditch until such time as he pays the same to the person or persons performing his proportion of such labor, together with ten per cent. per month thereon additional. The number of hours constituting a day's labor, and the value thereof, shall be determined by the respective water ditch companies in the rules and regulations they may severally adopt. Leaving the notice contemplated in this section at the residence of any owner in a ditch company, with any member of his or her family over the age of fifteen years, shall be deemed a sufficient service for the purposes of this Act. Every person owning an interest in any water ditch, or owning any interest in the use of the water therein, shall be considered a member of such water ditch company.

SEC. 10. The Act entitled an Act to create a Board of Water Commissioners in Tulare County, and to define their powers and duties, approved April fourth, eighteen hundred and sixty-four, and an Act entitled an Act to amend an Act entitled an Act to create a Board of Water Commissioners in Tulare County, and to define their powers and duties, approved April fourth, eighteen hundred and sixty-four, approved March

twentieth, eighteen hundred and sixty-six, are hereby repealed.

SEC. 11. This act shall take effect and be in force from and after its passage.

AN ACT

To put into effect the provisions of the Civil Code relative to water rights.

[Approved March 27, 1872. Statutes 1871 2, p. 622.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Title VIII (eight) of Part IV (four) of Division Second of the Civil Code of the State of California shall be in full force and effect from and after the first day of May, eighteen hundred and seventy-two.

SEC. 2. The Revision Commission are hereby authorized to cause to be printed and certified by their Chairman twelve hundred copies of Title VIII (eight), in pamphlet form, and to distribute them to the members of the Legislature and county officers of the several counties.

SEC. 3. This Act shall be in force and effect from and after its passage.

AN ACT

Supplemental to an Act entitled "An act to authorize the incorporation of canal companies and, to provide for the construction of canals and ditches," approved April second, one thousand eight hundred and seventy.

[Approved March 30, 1872. Statutes 1871-2, p. 732.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Corporations may be formed under the

provisions of an Act entitled "An Act to provide for the formation of corporations for certain purposes," approved April fourteenth, eighteen hundred and fifty-three, and of the several Acts amendatory thereof and supplementary thereto, for the following purposes, namely: the construction of canals, ditches, and flumes, for the transportation of passengers or of freight, or of both passengers and freight, for supplying water for irrigation, for procuring water power, for conveying water for mining or manufacturing or agricultural purposes, or for any or all of such purposes combined.

SEC. 2. Any company organized in pursuance of this Act, or any company organized under any pre-existing Acts for similar purposes, shall have power to locate and fix upon the line or route of its proposed ditch, canal, or flume, and select the site or sites of its proposed dams, embankments, and reservoirs, in conformity with the designation of its engineer or business manager.

SEC. 3. After the lapse of ten days from the filing of the report of the Commissioners, if no motion to vacate the same is made, or if, being made, it is denied, or after the lapse of ten days from the filing of the report of a new commission, as provided in the Act to which this Act is supplemental, the County Judge shall proceed to make an order upon the same, condemning so much of the land as he shall deem necessary for such canal or ditch, or flume and other works; such order shall declare the sum to be paid by way of damages by such company, and shall award to such company the right to occupy such land and construct the proposed works upon payment by it to such owner or occupant of the sum so provided, which said order shall be duly filed in the office of the Clerk of said County Court; and from the date of the payment of such sum to such owner or occupant the said company shall have full right and authority to enter upon such land, and to erect and construct its proposed canal, ditch, or flume,

and other works along the proposed route and upon its proposed site and sites, and shall have and enjoy the said land so condemned during the existence of such company; *provided*, that at any stage of the proceedings under this Act subsequent to the presentation to the County Judge of the petition mentioned in the Act to which this is supplemental, and to the filing of the same in the office of the Clerk of said Court, said Court or the Judge thereof at chambers shall, by order or rule in that behalf made, authorize such company, if already in possession, to continue the use and possession of the land so sought to be condemned, or if not in possession, to take possession of and to use the same for the purposes for which it is sought to be condemned, during the pendency and until the final conclusion of such proceedings, and shall stay all actions and proceedings against such company on account thereof; *provided* further, that such company shall pay into Court a sufficient sum of money, or give security to be approved by said Court or the Judge thereof, to pay the said damages when ascertained, and such other damages as such owner or occupant of said premises shall sustain by reason of such entry upon and use of the same under and in pursuance of the order last aforesaid if said petition shall be denied or dismissed.

SEC. 4. Every company organized in pursuance of this Act shall construct and keep in good repair at all times, for public use, the various bridges across any canal, ditch, or flume owned by it, required by the Board of Supervisors of the county wherein such crossing is situated, such bridge being on the line or crossing a public highway or county road, and necessary for public use.

SEC. 5. The provisions of this supplemental Act shall apply to the County of Tehama only; but nothing herein contained shall be construed as repealing any part or portion of the Act to which this Act is supplemental, or of the Act entitled "An Act to authorize the

incorporation of canal companies and the construction of canals," approved May fourteenth, eighteen hundred and sixty-two, but the said Act shall be and remain in full force, except as said Act shall be construed and modified in its application to the County of Tehama by the provisions of this Act.

SEC. 6. This Act shall take effect and be in force from and after its passage.

AN ACT to promote irrigation.

[Approved April 1, 1871-2. Statutes 1872, p. 945]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Whenever the owners of any body of lands susceptible of one mode of irrigation or drainage desire to irrigate or drain the same, they may present to the Board of Supervisors of the county in which the lands or the greater portion thereof are situated, at a regular meeting of the Board, a petition setting forth that they desire to adopt measures to irrigate the same, the description of the lands by legal subdivisions, the number of acres in the whole district, and the number of acres in each tract, with the names of the owners thereof and the names of three persons who may desire to serve as Trustees, for the first three months.

SEC. 2. The petition must be verified by the affidavit of one of the petitioners, and must be published for four weeks next preceding the hearing thereof, in some newspaper published in the county in which the lands are situated; or, if there is no newspaper published in the county, then it must be published in some newspaper having a general circulation in the county, and an affidavit of publication must be filed with such petition.

SEC. 3. When a district is situated partly in different

counties, the Trustees must, after the petition has been granted, forward a copy thereof to the Clerk of the Board of Supervisors of each of the counties in which any portion of the district may lie, and the Board to which the same is forwarded must not allow another district to be formed within such district unless with the consent of the Trustees thereof.

SEC. 4. If the Board of Supervisors find upon the hearing of the petition that the statements are correct, and that no land is improperly included or excepted from the district, they must note their approval on the petition, which approval must be signed by the President and attested by the Clerk: and from and after the approval the district is duly formed, and the persons named in the petition are the Trustees for the first three months, and until their successors are appointed.

SEC. 5. The petition must then be recorded by the County Recorder in a book kept for the purpose.

SEC. 6. After the approval of the petition, the petitioners may make such by-laws as they deem necessary for future appointment of Trustees and to effect the works of irrigation or drainage, keep the same in repair and operation, and for the control and management thereof, by the votes or consent of a majority of the owners of the lands within their district.

SEC. 7. The by-laws adopted must be signed by persons owning a majority of the land within the district, and must be recorded by the County Recorder in the same book and immediately following the petition.

SEC. 8. The Board thus formed have power to elect one of their number President thereof, and to employ engineers to survey, plan, locate, and estimate the cost of the works necessary for the irrigation, the water rights needed, and the land needed for right of way, including drains, canals, sluices, water gates, embankments, and material for construction, and to construct, maintain, and keep in repair all works necessary to the object in view.

SEC. 9. The Board of Trustees must report to the Board of Supervisors of the county, or if the district is in more than one county then to the Board of Supervisors of each county in which the district is situated, the plans of the work and estimates of the costs, together with estimates of the incidental expenses of superintendence, repairs, etc.

SEC. 10. The Board by which the district was formed must appoint three Commissioners, disinterested persons, resident of the county in which the district or some part thereof is situated, and must view and assess upon the lands situated within the district a charge proportionate to the whole expense and to the benefits which will result from such works, which charge must be collected and paid into the County Treasury as hereinafter provided, and must be placed by the Treasurer to the credit of the district, and paid out for the work of irrigation or drainage upon the warrants of the Trustees, approved by the Board of Supervisors of the county.

SEC. 11. The warrants drawn by the Trustees must, after they are approved by the Board of Supervisors, be presented to the Treasurer of the county, and, if they are not paid on presentation, like endorsement must be made thereon, and they must be registered in like manner as county warrants.

SEC. 12. If a district is situated partly in different counties, the charge must be paid into the Treasury of the county in which the particular tract may be situated.

SEC. 13. If the original assessment is insufficient to provide for the complete irrigation or drainage of the lands of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repair of the works, the Trustees must present to the Board of Supervisors by which the district was formed a statement of the work to be done and its estimated cost, and the Board must make an order directing the Commissioners who made the ori-

ginal assessment, or other Commissioners to be named in such order, to assess the amount of such estimated cost as a charge upon the lands within the district, which assessment must be made and collected in the same manner as the original assessment.

SEC. 14. The Commissioners appointed by the Board of Supervisors must make a list of the charges assessed against each tract of land.

SEC. 15. The list must contain:

First—A description, by legal subdivisions or natural boundaries, of each tract assessed.

Second—The number of acres in each tract.

Third—The names of the owners of each tract, if known, and if unknown, that fact.

Fourth—The amount of the charge assessed against each tract.

SEC. 16. The list so made must be filed with the County Treasurer of the county, or if the district is partly situated in different counties, then the original list must be filed in the county first in order under alphabetical arrangement, and copies thereof, certified by the Commissioner, must be filed with the Treasurer of each of the other counties.

SEC. 17. From and after the filing of the list, or certified copy thereof, the charges assessed upon any tract of land within the county constitutes a lien thereon.

SEC. 18. The lists thus prepared must remain in the office of the Treasurer for thirty days, or longer if ordered by the Board of Trustees, and during the time they so remain any person may pay the amount of the charge against any tract to the Treasurer, without cost.

SEC. 19. If at the end of thirty days, or of the longer time fixed by the Trustees, all of the charges have not been paid, the Treasurer must return the lists to the District Attorney, who must at once proceed by civil action to collect such charges.

SEC. 20. The work must be executed under the direction and in the manner prescribed by the Board of Trustees.

SEC. 21. The Board must keep accurate accounts of all expenditures, which accounts, and all contracts that may be made by them, are open to the inspection of the Board of Supervisors, and every person interested.

SEC. 21. The Trustees may acquire, by purchase, all property necessary to carry out and maintain the system of irrigation or drainage provided for.

SEC. 22. The Trustees may acquire by condemnation:

First—The right to the use of any running water not already used for culinary or domestic purposes, or for irrigating, milling or mining purposes.

Second—The right of way for canals, drains, embankments, and other work necessary, and may take materials for the construction, maintenance, and repair thereof, from lands outside of as well as within the limits of the district.

SEC. 23. The provisions of Title VII, Part III of the Code of Civil Procedure are applicable to, and the condemnation herein provided for must be made thereunder.

SEC. 24. Whenever any district susceptible of one mode of irrigation or drainage is entirely owned by parties who desire to irrigate or drain the same, and to manage the irrigation or drainage without the intervention of Trustees or the establishment of by-laws, they may file the petition provided for in sections one and two, and must state therein that they intend to undertake the irrigation or drainage on their own responsibility.

SEC. 25. If the petition is granted, the owners of the lands have all the rights, immunities, and privileges granted to Boards of Trustees, and in all proceedings the names of the owners may be used instead of the names of Trustees.

SEC. 26. This Act shall not be so construed as applying to the Counties of Fresno, Kern, Tulare, and Yolo.

SEC. 27. This Act, and the provisions of the Title of the Code of Civil Procedure herein referred to, so far as proceedings under this Act are to be had, shall be in force from and after the passage of this Act.

WATER RIGHTS—BY APPROPRIATION UNDER THE CIVIL CODE—[TITLE VIII.]

SECTION 1410. The right to the use of running water flowing in a river or stream, or down a cañon, or ravine, may be acquired by appropriation.

SEC. 1411. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

SEC. 1412. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

SEC. 1413. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

SEC. 1414. As between appropriators, the one first in time is the first in right.

SEC. 1415. A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point of intended diversion, stating therein:

1. That he claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure;

2. The purposes for which he claims it, and the place of intended use;

3. The means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it;

A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.

SEC. 1416. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snow or rain.

SEC. 1417. By "completion" is meant conducting the waters to the place of intended use.

SEC. 1418. By a compliance with the above rules, the claimant's right to the use of the water relates back to the time the notice was posted.

SEC. 1419. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith.

SEC. 1420. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must, after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases.

SEC. 1421. The Recorder of each county must keep a book, in which he must record the notices provided for in this title.

SEC. 1422. The rights of riparian proprietors are not affected by the provisions of this title.

AN ACT

To promote Irrigation in the County of Los Angeles.

[Approved March 10, 1874. Statutes 1873-4, pp. 312 to 318.]

The People of the State of California, represented in Senate and Assembly, do enact as follows :

SECTION 1. The office of Superintendent of Irrigation for the County of Los Angeles is hereby created. A Superintendent of Irrigation to fill such office, shall be chosen in the manner hereinafter specified, and his duties shall consist:

First—In promoting an efficient, and as nearly as possible, a uniform system of irrigation throughout the county;

Second—He shall superintend, advise, and direct the Water Commissioners hereinafter provided for, of each and every irrigation district in said county;

Third—He shall visit the different parts of the county whenever he may deem it advisable, for the purpose of inspecting and initiating works of irrigation of any kind or description, and shall take all needful steps to improve the same;

Fourth—He shall make an annual report to the Board of Supervisors of said county, which shall contain a full and complete statement of his acts and doings, in his official capacity, during the preceding year: the manner in which the system herein provided for has operated; and shall suggest and recommend such improvements as he shall deem necessary to perfect such system;

Fifth—He shall be paid a salary to be fixed as hereinafter provided, in the same manner and out of the same fund as the District Attorney;

Sixth—Before entering upon the duties of his office, he shall take and subscribe to the usual official oath, and file an undertaking, with sureties, to be approved by the Board of Supervisors of said county.

SEC. 2. The Board of Supervisors shall, in the first instance, appoint said Superintendent of Irrigation, who shall remain in office until the first Monday of March, eighteen hundred and seventy-six. At the general election in the year eighteen hundred and seventy-five, there shall be elected a County Superintendent of Irrigation, who, after being duly qualified as herein provided, shall enter upon the discharge of his official duties on the first Monday of March, Anno Domini eighteen hundred and seventy-six. The term of office for the Superintendent so elected shall be two years, or until his successor shall be duly elected and qualified.

SEC. 3. When a majority of the property owners, or their legal agents, residing in a section which is or may be made an irrigation district, shall, by petition, request said Superintendent to create an irrigation district of the lands of the locality in which they reside, the Superintendent shall, as soon as his official duties will permit, visit the locality, and thoroughly examine as to the feasibility of the undertaking; the quantity of water available; the possibility of increasing the supply, if necessary, and the practicability of constructing the required dams, ditches, flumes, reservoirs, or other irrigation works required to render the said water supply available for irrigation purposes. If he shall decide that such works as may be needed can be profitably constructed, he shall order a preliminary survey to be made at the expense of the applicants for the proposed new district, by a competent engineer, to ascertain the cost and practicability of said work. If, after the report of the engineer has been made, he shall deem the construction of said works feasible and advisable, he shall order the engineer to ascertain, by actual survey, the exterior boundaries of the lands which can be irrigated by said water supply. All the lands within such exterior boundaries susceptible of irrigation, and so far as the water at command will supply, shall constitute said district. The superin-

tendent shall thereupon notify the Board of Supervisors, who shall order an election, as hereinafter provided, by the qualified electors of said district, who will, on the day appointed, proceed to elect three Water Commissioners, and upon the same ballot vote "Yes" or "No" upon the question "Shall a tax be levied to pay for the proposed irrigation works?" If a majority of the ballots cast are in favor of said tax it shall be levied. If a majority of the said ballots are against the tax, it shall not be levied. It shall be the duty of the Water Commissioners of the district, as soon as practicable, to meet and levy the tax provided in this section.

SEC. 4. When a majority of the property owners, or their legal representatives, residing in a section which is not included in any irrigation district, shall, by petition, request said Superintendent to extend the boundaries of any irrigation district so as to include the lands of the locality in which they may reside, the Superintendent shall proceed in the same manner as in the formation of new districts, as provided in section three of this Act.

SEC. 5. On the day of the general election, there shall be held an election in each water district, at which three Water Commissioners shall be chosen by the qualified electors of the district, who shall hold office for one year.

Second—At the same election, whenever the office of County Superintendent is vacant, or is about to become vacant, said qualified electors will also elect a County Superintendent, who will hold his office for two years, unless he is elected to fill an unexpired term, in which case he will hold office for the remainder of such term, and until his successor is duly elected and qualified.

SEC. 6. It shall be the duty of the Board of Supervisors to issue a proclamation when ordering an election, specifying the object for which such election is to be held, at least thirty days before the appointed day

of election, and have the same published, at least once each week, for four successive weeks, in some paper published in the county, having the largest circulation in the section or district where such election is to be held.

SEC. 7. No person shall be considered a qualified elector at any water district election, except the owner or legal representative of property paying a tax, or which is liable to be taxed for irrigation purposes in the district.

Second—It shall be the duty of the Judges and Inspectors of Elections to prepare a separate ballot-box, in which the ballots of said qualified electors shall be deposited. After the closing of the polls, the ballots shall be counted as usual, and all of the ballots and one tally-list shall be securely sealed and promptly forwarded to the County Clerk, the other tally-list to be kept for at least six months by the Judge of Election.

Third—In case of a contested election, all proceedings must be conducted in accordance with the State laws governing contested elections in other cases.

Fourth—The County Clerk shall deliver the said ballots and tally lists to the Board of Supervisors, as provided by law for other election returns. The said Board shall proceed to examine the ballots and tally lists, and if it appear that the election has been legally conducted, the Board of Supervisors shall issue certificate of election to the party receiving the greatest number of votes.

Fifth—Should a vacancy occur in the Board of District Water Commissioners, it shall be the duty of the County Superintendent to appoint some suitable person, legally qualified, to fill such vacancy, and such appointee shall hold office until the next general election, and until his successor in office has been duly elected and qualified in accordance with the provisions of this Act.

Sixth—The Water Commissioners when elected as hereinbefore provided, shall, before entering upon the

duties of their office, and within ten days after receiving official notice of their election, each take and subscribe to the usual official oath, and file an official bond in the sum of two thousand dollars, with sureties to be approved by the Board of Supervisors. Said Water Commissioners shall, subject to the approval of the County Superintendent, have the exclusive control of all waters of every kind and description used for irrigation purposes in the district for which they have been elected.

Seventh—The Water Commissioners shall receive the same compensation and mileage as the County Supervisors, and shall have full power to appoint or discharge an overseer and his assistants, and to fix the amount of their compensation, and to pay the same.

Eighth—The Water Commissioners shall fix the price at which water shall be sold, charging therefor a sum sufficient to pay the district proportion of the salaries of the County Superintendent and District Attorney; the mileage of the Superintendent when attending to the necessary and especial business of the said district; the salary and mileage of the said Commissioners and their necessary employés; ordinary repairs, and all other current and incidental expenses of the water district.

Ninth—Said Commissioners shall so conduct their business as to make the sale of water for irrigation purposes, and rent of the same for a water power, produce a sum sufficient to accomplish the objects hereinbefore specified, and no more, in each district.

Tenth—In the preliminary location of the main ditches, great care must be taken to bring out the water at the greatest elevation possible, or advisable, consistent with reasonable cost, to the end that the water may irrigate the greatest possible extent of country, and that the water used upon the lower levels may be previously utilized as a water power, thus diminishing the cost of the water to the farmer.

Eleventh—When from any cause extraordinary repairs are required, said Water Commissioners, with the approval of the Superintendent, shall have authority to levy a tax sufficient to pay for such repairs upon the lands. The Board of Water Commissioners shall in all cases, decide what are irrigable lands, and no property except lands subject to irrigation, shall be taxed for irrigation purposes.

Twelfth—When any work intended to increase the existing water supply or improve existing facilities for irrigation is proposed, the Water Commissioners shall ascertain as nearly as practicable, the probable cost of the work, and if the Superintendent approves the same, he shall notify the Board of Supervisors, who shall order an election as hereinbefore provided; and if at such election it shall appear that a majority of the votes are in favor of such improvement, then the Commissioners will be authorized to do the proposed work and levy a tax to pay for the same; but, on the contrary, if a majority of the votes cast are opposed, then the said work shall not be performed, nor shall a tax be levied therefor.

SEC. 8. The District Overseers herein provided for, before entering upon the duties of their office, shall each take the usual official oath and give bonds for the faithful discharge of the duties of his office, in the sum of one thousand dollars (\$1,000), his sureties to be approved by the Board of District Water Commissioners.

Second—He shall obey all orders of the District Board of Water Commissioners, by whom he is appointed. He shall have control and direction, under the Commissioners, of all subordinate employés and the power to suspend them from duty, reporting the same to the Water Commissioners for final action.

Third—He shall supervise the distribution of water to parties presenting orders from the Commissioners, in the quantity paid for, each in his turn, according to the number upon their tickets; the first on the list to be first served, and so on in rotation, until all are served.

Fourth—As soon as practicable after the passage of this Act, it shall be the duty of the Board of Supervisors to order a special election in each water district for the purpose of electing a District Overseer—for each district, who shall be *ex-officio* Assessor and Tax Collector for his water district.

Fifth—The Overseer shall have power to arrest any and all persons for unlawful interference with ditches, dams, reservoirs, or other irrigating works.

Sixth—He shall deposit all moneys received from taxes, water sales, and all other sources, with the Treasurer of said district.

SEC. 9. The Boards of Water Commissioners, provided for in this Act, shall, at their first meeting, choose one of their number for President, another as Auditor, and another as Treasurer.

Second—The Treasurer shall safely keep all moneys received by him, from whatever source, to be paid out only upon drafts signed by the President of the Board of Water Commissioners for the district, and countersigned by the Auditor. All sums above five hundred dollars shall be deposited with the County Treasurer for safe keeping. The County Treasurer shall keep the money so deposited in special and separate funds, known and designated as "Water District Fund No. —." The number of the fund to correspond with the number of the district to whose credit the moneys are deposited, to be paid out only upon drafts duly signed by the President of the District Board of Water Commissioners, countersigned by the Secretary, and approved by the County Superintendent.

Third—The Board of Water Commissioners may appoint as Secretary a member of the said Board, whose duty it shall be to attend all meetings thereof, and keep an accurate record of all proceedings, in durable form, and to whom they are authorized to pay a suitable salary. The said Board of Water Commissioners shall meet regularly one day every two weeks, or oftener in

their discretion, to receive applications from parties desiring to purchase water for the ensuing two weeks. All parties applying for water must pay to the Treasurer the price of the quantity of water apportioned, at which time the Secretary shall enter in a book kept for that purpose, each in turn, according to priority of application, the names of the applicants, and shall furnish to each a card or water ticket, which shall be numbered and dated.

Fourth—The Boards of Water Commissioners, with the approval of the County Superintendent, may acquire, by purchase or otherwise, any lands, ditches, dams, water, and water rights which it may be found necessary to acquire for the proper and effective construction and management of the works of irrigation.

Fifth—In case such dams, lands, ditches, water rights, and water cannot be acquired by voluntary sale upon the part of owners, then said Board shall have power to proceed to condemn the same for the use of the district, in the manner prescribed by Title VII of the Code of Civil Procedure; *provided*, that in said condemnation no one shall be deprived of water sufficient to irrigate the amount of land heretofore under irrigation and actual cultivation, but no apportionment shall exceed such amount, except in equal ratio with all other lands in the district not before irrigated, but the cultivation of which is desired.

Sixth—The Treasurer of the Board shall give the usual notice of the time when taxes already due will become delinquent, and shall be ready to receive said taxes, at his office, in some convenient place, for six hours per day, during the last six days before the said taxes become delinquent, to give all persons opportunity to pay; after which time, all delinquents shall be proceeded against according to the tax law of the State of California.

SEC. 10. The District Attorney of the said county shall be the legal adviser of both the County Superin-

tendent and the several Boards of Water Commissioners. He shall prosecute all suits in which they are plaintiffs, and defend all suits in which they are defendants; and for his services in this capacity, he shall receive a salary out of the District Water Funds, each district paying an amount proportionate to its assessed valuation.

The Supervisors of the county are hereby empowered to fix the amount of the said salary; the same being proportioned to the amount of labor performed.

Second—Should there, at any time, be a scarcity of water, then in that case the water shall be apportioned to each person in proportion to the amount of water^r which has heretofore been used, owned, or acquired by him under the laws of the State of California, reference being had to the date of acquirement, and no more water shall be apportioned than shall be necessary, without waste, to irrigate the actual amount of land under cultivation, or bearing crops to be benefited by such apportionment; but at no time shall there be apportioned to persons having previously acquired rights any more water than they were entitled to previous to this enactment, until all irrigations in said district have been supplied under the apportionment; and then the surplus water, if any, shall be distributed among irrigators in proportion to the number of acres under cultivation.

Third—The water for the several ditches in the various districts shall be measured and divided by means of boxes at least five feet long and four feet wide; the lower end of which shall be closed, except as hereinafter provided, and the upper end shall be without obstruction to the flow of water. At the depth of six inches from the top of the lower end of each box, there shall be an opening extending entirely across the bottom of the box, and of a depth sufficient to permit of the unobstructed passage of the water. In measuring the water, the Overseer shall fill the box so as to maintain,

as nearly as may be, a constant head of six inches above said opening, so that the division of the water into irrigating heads may be as nearly equal as practicable, where the same is taken from the main ditch.

Fourth.—All waters from rains, rivers or streams which can be applied to irrigation purposes, are hereby declared the property of the people, to be held for their use, and so utilized as to confer the greatest possible good upon the greatest number. When springs rise upon the lands of private owners, the waters thereof must be used without waste, and when not used for irrigation, domestic purposes, or for watering stock, must be permitted to flow without hindrance in the natural channels, or collected in reservoirs for future use; not however to the detriment of those who have taken up and are now using such waters for irrigation purposes.

SEC. 11. The owners of artesian wells in Los Angeles County, when the water therefrom is not used for irrigation, are hereby required to diminish the flow of the same, by capping the wells or otherwise, only permitting a flow of water sufficient for domestic purposes and for watering stock. If, when notified by the County Superintendent to check and regulate the flow from any wells, as contemplated by this Act, any well owner or his lessee, agent or representative having charge of the same, shall refuse or neglect to do so, the County Superintendent shall direct the District Attorney to bring suit against such person or persons, and when convicted they shall pay a fine of fifty dollars (\$50) for each offense.

SEC. 12. The cutting or wilful damage of ditches or other irrigation works, or the unauthorized taking of water from any ditch, dam or reservoir, holding or carrying water for irrigation purposes, or the drainage of cesspools or other filth into any irrigating ditch, or the obstruction of the flow of water in any irrigating ditch, is hereby declared a misdemeanor, punishable by a fine of not less than fifty nor more than one

thousand dollars, or by imprisonment in the County Jail not less than five nor more than thirty days, or by both fine and imprisonment, at the discretion of the Court.

SEC. 13. Nothing contained in this Act shall be construed as applying to the City of Los Angeles, or to the waters of the Los Angeles River, which are hereby specially exempted from its operation.

SEC. 14. All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed, so far as relates to the County of Los Angeles.

SEC. 15. This Act shall be in force and take effect from and after the date of its passage.

AN ACT

To amend an Act entitled an Act authorizing certain persons to improve a portion of King's River, and to erect booms thereon, approved March eighteenth, eighteen hundred and seventy-two.

[Approved March 27, 1876. Statutes 1875-6, p. 499.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section one of said Act is hereby amended so as to read as follows: Section 1. Jesse Morrow, Elias Jacob, and John Sutherland, their associates and assigns, are hereby authorized and empowered, at their own expense, to improve that portion of Kings River, in the County of Fresno, lying and being between the confluence of the middle fork of said river and a point in King's River where the township line between township thirteen and fourteen south crosses said river, by removing therefrom all obstructions to the use of said river for floating timber, lumber, saw-logs, and wood down the same. The improvements of said river must be commenced within one year, and completed within

two years from the date of the passage of this Act, and said parties shall, within said period, expend in the work of improving and making said river available and practicable for the uses and purposes aforesaid, a sum not less than fifteen thousand dollars, in gold coin.

SEC. 2. Section two of said Act is hereby amended so as to read as follows: Section 2. After the completion of the improvements of said river, mentioned in section one herein, it shall be lawful for the persons making such improvements to erect upon said river, at such points and in such manner as shall not prevent the use of the waters of said river for mechanical, irrigating, or milling purposes, or in any way interfere with or diminish the flow of water into the canals already constructed, or prevent the free use of the land lying on the margin thereof, and not lower down than that point in King's River where the township line between township thirteen and fourteen crosses said river in said county, a boom or booms for the purposes of securing the wood, lumber, and timber being floated down said stream, and to maintain such boom or booms for the period of twenty years, and during such period to charge and collect, demand and receive, as toll and compensation for the use of said river, from each and every person and corporation using the same, at such rate per thousand feet of lumber or timber, board measurement, and per cord of wood, as the Board of Supervisors of the County of Fresno shall fix and determine from time to time, from and after the improvements have been made in King's River as provided in the provisions of this Act.

SEC. 3 This Act shall take effect and be in force from and after its passage.

AN ACT

Concerning water ditches and water privileges for irrigating, mining, and manufacturing purposes, in the Counties of Fresno, Tulare, and Kern.

[Approved, March 29, 1876. Statutes 1875-6, p. 547.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Board of Supervisors of the Counties of Fresno, Tulare, and Kern, are hereby made *ex officio* Water Commissioners in and for said counties; they shall have the power and shall perform the duties hereinafter set forth.

SEC. 2. They shall procure a suitable book, and their Clerk shall keep therein a full record of all their official acts as such Water Commissioners, which shall be open to the inspection of any citizen.

SEC. 3. No ditch shall hereafter be taken out of any stream in the waters of which different persons have an interest by virtue of prior appropriation, without leave of said Commissioners.

SEC. 4. Any person or persons desiring to construct a ditch and appropriate water for irrigation, manufacturing, or mining purposes, shall file a petition with said Commissioners, setting forth the stream from which they intend to take the water, the point where the proposed ditch will commence its general course, and the proposed size thereof; whereupon the said Commissioners may grant the right to construct said ditch, and to use water sufficient to fill the same, for the uses and purposes set forth in said petition; *provided*, that nothing herein contained shall be so construed as to affect the right and privileges of those who, by prior appropriation and by actual use, have secured the right to the use of water from the several rivers and streams of Fresno, Tulare, and Kern Counties.

SEC. 5. Said Commissioners shall have power to

grant the right of way to lay out and construct ditches through any lands in said counties, and any person damaged thereby, or by the water of any ditch, shall be entitled to such compensation as may be agreed upon between the parties interested; and in case the parties cannot agree, each party shall choose an arbitrator, and the two chosen shall choose a third; and such arbitrators shall assess the damages sustained under oath, which sum shall be paid before the ditch is constructed, by the parties using the water, in proportion to their several interests therein; and the decision of said arbitrators shall have the force and effect of a judicial decision; *provided*, that in case any of the parties herein shall refuse to choose an arbitrator, then the parties desiring the right of way may apply to the District Court of such county and have such right of way condemned under Title Seven Part Three of the Code of Civil Procedure; and in all such cases when the right of way to construct ditches, and fill the same with water, the right to fix maximum rates to be charged by ditch owners for water per inch is expressly reserved to such Board.

SEC. 6. The owners of water ditches may make such rules and regulations for the government of their several companies, not repugnant to the Constitution and laws of the State of California, as a majority of them may deem just and proper, and elect such officers for the transaction of their business as they may require; *provided*, that in all meetings of water ditch companies each owner shall be entitled to a vote in proportion to his or her interest therein.

SEC. 7. All water ditches shall be kept in good repair by the owners thereof; and any member of the said Board of Commissioners shall have power to close or authorize any other person to close and shut off the water from any ditch not in good repair; and any person opening or turning in the water into such ditch before the same is repaired shall be deemed guilty of a misdemeanor.

SEC. 8. When any ditch shall break so as to cause a loss or wastage of water, or shall overflow its banks, any person shall have a right to notify, either verbally or in writing, any owner in the said ditch; and if the said ditch is not repaired within forty-eight hours after the time when such notice is given, then any person shall have the right to repair said ditch, and shall have the right of action to recover in any Court of competent jurisdiction, from the owners of said ditch, or any of them, double the cost of suit.

SEC. 9. Whenever a majority in interest of the owners in any ditch company, or their authorized agent, shall deem it necessary to repair, enlarge, or extend their ditch, they shall cause a notice, either written or verbal, to be served upon each owner therein, specifying a time to commence work therein; and any owner therein neglecting or refusing to perform his proportion of such labor, or pay his proportion of the cost thereof, shall forfeit his right to the use of any water from such ditch until such time as he pays the same to the person or persons performing his proportion of such labor, together with ten per cent. per month thereon additional. The number of hours constituting a day's labor, and the value thereof, shall be determined by the respective water ditch companies in the rules and regulations they may severally adopt. Leaving the notice contemplated in this section at the residence of any owner in a ditch company, with any member of his or her family over the age of fifteen years, shall be deemed a sufficient service for the purposes of this Act. Every person owning an interest in any water ditch, or owning any interest in the use of the water therein, shall be considered a member of such water ditch company.

SEC. 10. The Board of Water Commissioners of the said counties are hereby authorized to fix by order, and make a record of the same, in a book kept for that purpose, the maximum rate to be charged by ditch owners

for water, per inch, for irrigation, manufacturing, or mining purposes, which rate shall apply to ditches heretofore as well as to those hereafter constructed, whether under and by virtue of this Act or any previous law of this State.

SEC. 11. All Acts and parts of Acts, so far as they conflict with the provisions of this Act in the counties herein named, are hereby repealed.

SEC. 12. This Act shall take effect and be in force from and after its passage.

WATER RIGHTS UNDER UNITED STATES
LAWS—DESERT LAND ACT—WATER FOR
RECLAMATION.

[March 3, 1877. Vol. 19, Statutes U. S., p. 377.]

The right to the use of water for the reclamation of desert lands in accordance with the provisions of an Act approved March 3, 1877, shall depend upon *bona fide* prior appropriation; and such right shall not exceed the amount of water actually appropriated and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of lakes, and rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held for the appropriation and use of the public for irrigation, mining and manufacturing purposes, subject to existing rights.

WATER AND WATER RIGHTS AS DECLARED
BY THE CONSTITUTION OF CALIFORNIA.

ARTICLE XIV.

SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; *provided*, that the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed annually, by the Board of Supervisors, or city and county, or City or Town Council, or other governing body of such city and county, or city or town, by ordinance, or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable for such further processes and penalties as the Legislature may prescribe. Any person, company or corporation collecting water rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company or corporation to the city and county, or city or town, where the same are collected, for the public use.

SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a fran-

chise, and cannot be exercised except by authority of and in the manner prescribed by law.

AN ACT

Authorizing the Boards of Supervisors of the counties in which water is sold for the purpose of irrigation to fix the rates at which water shall be sold.

[Approved March 26, 1880. Statutes 1880, p. 59.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Boards of Supervisors of the several counties of this State in which water is appropriated, furnished and sold principally for the purposes of irrigation, are hereby authorized and required to fix the maximum rates at which such water shall be furnished and sold, at a meeting to be held in the month of February of each year; *provided*, that in the year eighteen hundred and eighty such rates shall be fixed at the first meeting after the passage of this Act. The rates so fixed and established shall be in force from and after the first day of July, after the date of fixing said rates, and shall continue in force for the period of one year; *provided*, that nothing in this section shall apply to water furnished within the limits of any incorporated city and county, city or town.

SEC. 2. Any person, company or corporation, collecting rates for water furnished for irrigation in any county in this State, in excess of the rates as provided in section one of this Act, shall forfeit, for the public use, the franchise and water works of such person, company or corporation, to the county in which such excessive rates were charged.

SEC. 3. Upon affidavit being made by any interested party, setting forth that any such company, person

or corporation has charged rates for water furnished for irrigating purposes in excess of the rates established by the Board of Supervisors, the said Board of Supervisors shall cause the District Attorney to commence an action in the Superior Court of the county within thirty days from the receipt by them of such affidavit, to enforce the forfeiture of the franchise and water works of such person, company or corporation.

SEC. 4. If the Board of Supervisors fail or neglect to fix the rates as provided in section one of this Act, or if the Board of Supervisors fail or neglect to commence the action provided for in section three of this Act, as therein provided, any interested person may commence proceedings to compel the performance of such duties.

SEC. 5. No person, company or corporation selling water for irrigation shall be permitted to exercise any control as to the use of the water after its delivery to the purchaser.

SEC. 6. This Act shall take effect immediately.

In addition to the foregoing, we call attention to the following Acts which have been passed by the Legislature of this State:

An Act authorizing the creation of corporations for the specific purposes named in the Act, but does not embrace irrigation. Approved April 22, 1850. Statutes 1850, p. 347.

An Act providing for the incorporation of water companies in San Francisco. Also, on same day, an Act ratifying the ordinance of June 11, 1851, providing for the introduction of water in the City of San Francisco. Approved May 3, 1852. Statutes 1852, pp. 171 and 200.

An Act ratifying the ordinance of March 19, 1856, authorizing the Mountain Lake Water Company to introduce fresh water into the City of San Francisco, but prohibiting any construction of said act from impairing any rights of the San Francisco Waterworks. Also, on same day, an Act ratifying the ordinance of August 6, 1857, authorizing the San Francisco City Waterworks to introduce pure fresh water into the City and County of San Francisco for fire, municipal and other purposes. Approved March 18, 1858. Statutes 1858, pp. 73 and 75.

A general Act for the incorporation of water companies to supply any city and county or any cities or towns in this State, or the inhabitants thereof, with pure fresh water. Approved April 22, 1858. Statutes 1858, p. 218.

An Act authorizing the owners of the Spring Valley Waterworks to lay down water pipes and furnish water for fires and other municipal uses in the City of San Francisco. Approved April 23, 1858. Statutes 1858, p. 254.

An Act amendatory of the preceding Act, guarding against interference with other water or gas pipes, or with the right of the Mountain Lake Water Company, or the San Francisco Waterworks Company. Approved April 11, 1859. Statutes 1859, p. 209.

An Act amending Section 2 of the Act of April 22, 1858, and directing the mode of procedure in acquiring lands, water, reservoirs, etc., for supplying pure fresh water to the inhabitants of any city or town in the State. Approved April 24, 1861. Statutes 1861, p. 228.

An Act providing for the protection of water companies and to prevent the destruction of water works and the fraudulent use of water. Approved May 18, 1861. Statutes 1861, p. 533.

An Act allowing corporations to be organized for engaging in irrigation as a business. It increases the topics referred to in Chapter 5 of the Act of April 22, 1850, p. 347; May 3, 1852, p. 171; of April 14, 1853, p. 87; of May 18, 1853, p. 251; of April 30, 1855, p. 205; of April 22, 1858, p. 218, and includes irrigation. Approved May 14, 1862. Statutes 1862, p. 540.

Section 5 of the above Act has been amended at various times, as to the counties to which it may or may not apply, viz.: Statutes 1865-6, pp. 53 and 605; 1867-8, p. 134; 1871-2, p. 732.

An Act extending the rights and privileges of the San Francisco City Water Works Company and releasing said company from the payment to the City of San Francisco of five per cent of its gross earnings. Approved April 8, 1863. Statutes 1863, p. 225.

An Act providing for the consolidation of three companies organized to supply San Francisco with pure water, viz.: Glas and Salinas Water Company, Crystal Springs Water Company, and the Spring Valley water Works. Approved April 27, 1863. Statutes 1863, p. 745.

An Act concerning watercourses in the City of Los Angeles. Approved April 2, 1870. Statutes 1869-70, p. 645.

An Act repealing the Act of April 14, 1853, and is a substitute therefor, applying to the same special topics,

but making modifications therein and omitting the exceptions as to the particular counties named in the Act of April 14, 1853. Approved April 2, 1870. Statutes 1869-70, p. 660.

An Act creating a Board of Water Commissioners in the City of Los Angeles, defining their powers and duties. Approved April 2, 1870. Statutes 1869-70, p. 702.

An Act relating to corporations formed for trading, manufacturing, mechanical, or other lawful business or purpose, subjecting them to the duties, conditions and liabilities imposed therein, and by certain sections of the Act of April 14, 1853, and of all other Acts amending the sections named. Approved April 4, 1870. Statutes 1869-70, p. 822.

An Act repealing above Act, and conferring the powers and duties of Board of Water Commissioners on Mayor and Common Council of City of Los Angeles. Approved January 19, 1872. Statutes 1871-2, p. 30.

Sections 2, 3 and 4 of Act amending the charter of the City of Los Angeles confers upon the Mayor and Common Council control over zanjias, watercourses, ditches, and canals within the city limits. Approved February 20, 1872. Statutes 1871-2, p. 128.

Section 1 of Article 2 of Act amending the charter of the City of Los Angeles, relates to watercourses and the control thereof within the city limits. Approved March 26, 1874. Statutes 1873-4, p. 633.

An Act authorizing the City and County of San Francisco to provide and maintain public water works for said city and county, and to condemn and purchase

private property for that purpose. Approved March 30, 1874. Statutes 1873-4, p. 807.

An Act establishing water rates in the City and County of San Francisco. Approved March 1, 1876. Statutes 1875-6, p. 82.

An Act regulating artesian wells, to prevent waste and damage by overflow thereof, in Santa Clara and Los Angeles Counties. Approved March 18, 1876. Statutes 1875-6, p. 331.

An Act authorizing the City and County of San Francisco to provide and maintain public water works for said city and county, and to condemn and purchase private property for that purpose. Approved March 27, 1876. Statutes 1875-6, p. 501.

The Charter of the City of Los Angeles was again amended, and section 1 of Article 2 defines the rights and powers of the city over Los Angeles River, and the distribution of water within the city limits. Approved April 1, 1876. Statutes 1875-6, p. 692.

An Act amendatory of and supplementary to Act of March 1, 1876. Approved April 3, 1876. Statutes 1875-6, p. 760.

An Act regulating, generally, the use of artesian wells, and to prevent the waste of subterranean waters in this State. Approved March 9, 1878. Statutes 1877-8, p. 195.

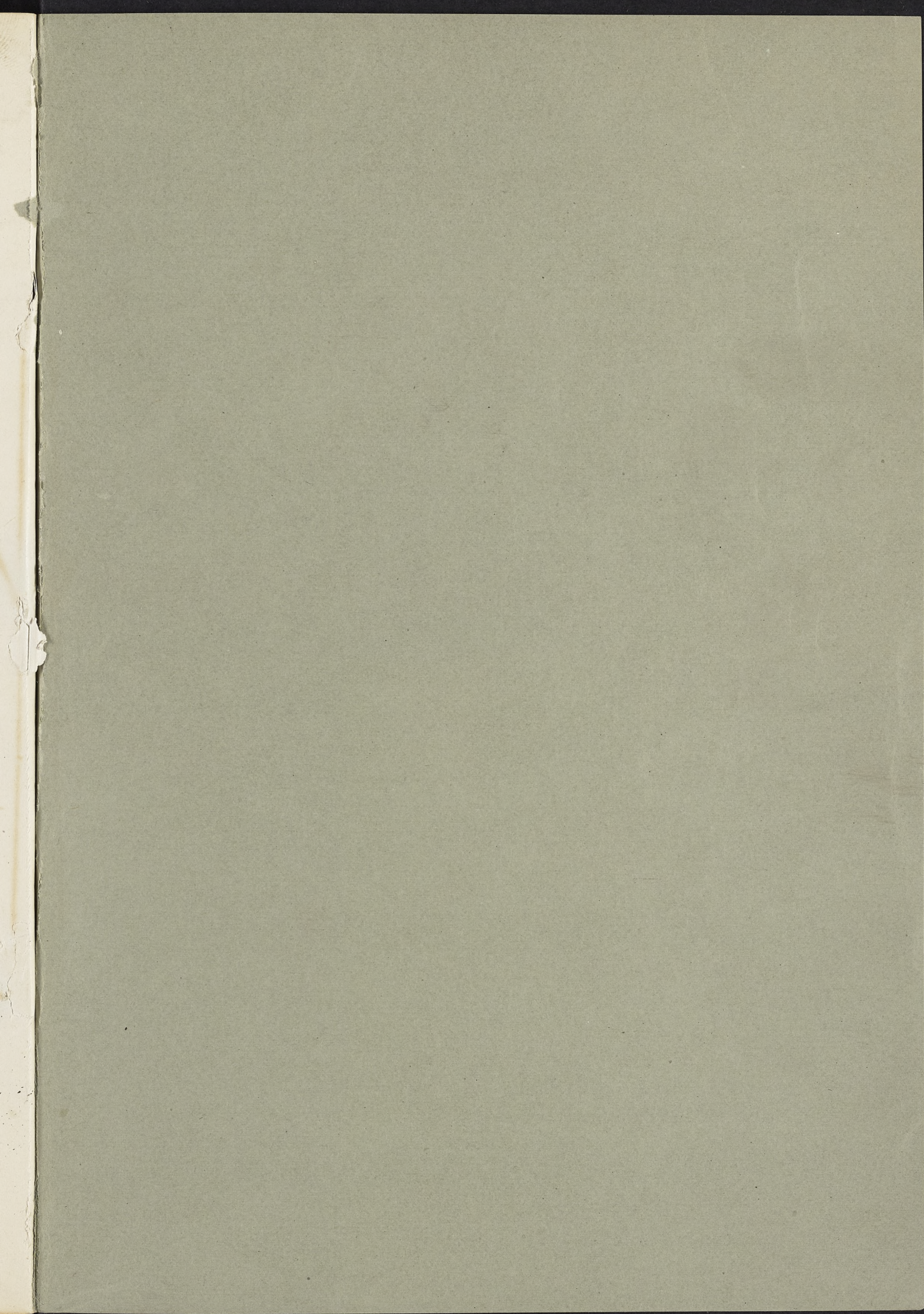
An Act to provide for and regulate irrigation in Township of Los Nietos, in the County of Los Angeles. The scope of this Act is not very different in principle from the laws of 1854 and 1874, but is more particular

in pointing out the duties of officers, and what irrigators have to do in acquiring water rights and using the water for irrigation. While this law repeals all former laws as to the Township of Los Nietos, Section 23 extends the privilege of this Act to any other township in the county desiring to avail themselves of its provisions, and points out the mode of proceeding. Approved March 20, 1878. Statutes 1877-8, p. 374.

An Act creating an irrigation district known as the "West Side Irrigation District," and relating to the Counties of San Joaquin, Stanislaus, Merced and Fresno. By section 41 of this Act, the State not only gave the right of way over State land for the contemplated canal, and provided for the condemnation of other lands required, but "dedicated and set apart for the uses and purposes of the canal, all waters and water rights belonging to the State within the district necessary for said purposes." Approved, March 25, 1878. Statutes 1877-8, p. 468.

An Act to provide a system of irrigation, promote rapid drainage, and improve the navigation of the Sacramento and San Joaquin Rivers. Approved, March 29, 1878. Statutes 1877-8, p. 634.

An Act repealing Act of March 27, 1876, which provided for acquiring and maintaining public water works in the City and County of San Francisco. Approved January 22, 1880. Statutes 1880, p. 1.



Recd copy within appendix
April 18. 1885-

Stetson & Beughton
Appellants Attys -